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NOMINATIONS—DOT

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

NOVEMBER 17, 1987

JAMES H. BURNLEY IV, TO BE SECRETARY, DEPARTMENT OF TRANSPORTATION; AND MARY ANN WEYFORTH DAWSON, TO BE DEPUTY SECRETARY

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JAMES H. BURNLEY IV, TO BE SECRETARY, DEPARTMENT OF TRANSPORTATION

TUESDAY, NOVEMBER 17, 1987

U.S. Senate,
Committee on Commerce, Science, and Transportation,
Washington, DC.

The committee met, pursuant to notice, at 10:04 a.m., in room SR-253, Russell Senate Office Building, Hon. Ernest F. Hollings (Chairman of the Committee) presiding.

Staff members assigned to this hearing: David St. John, professional staff member; and Ruth Johnson, minority professional staff member.

OPENING STATEMENT BY THE CHAIRMAN

The Chairman. The committee will come to order, please.

This morning the Committee on Commerce, Science, and Transportation meets to hear testimony on the nomination of James H. Burnley to be our new Secretary of Transportation. At the conclusion of this hearing, the Committee will turn to the nomination of Mary Ann Weyforth Dawson to be the Deputy Secretary of Transportation.

I have no doubt that Mr. Burnley has the experience and the qualifications to step right in and take the helm of the Department of Transportation. He has been extensively involved in the day-today management of the Department since he was confirmed as Deputy Secretary three years ago. And he has served as Acting Secretary since the departure of Mrs. Dole in September.

However, with crucial safety and economic issues now facing America's transportation system, this Committee must be concerned with more than just the management of a bureaucracy. Although there's little more than a year remaining in the current administration, we cannot resign ourselves to accepting a nominee who sees this job as nothing more than a caretaker position. There are a multitude of problems out there in the nation's transportation network. And the next Secretary of Transportation must be someone who will meet these problems head-on—someone who is ready and willing to put ideology and politics aside, work with the Congress, and do what's necessary to bring about the optimum level of safety and efficiency.

Nearly a decade after the advent of deregulation, airline travel in this country is the pits—the margin of safety has declined, record numbers of air travelers have been inconvenienced, and the airlines themselves are gobbling each other up in a wave of mergers that leaves us with no clue as to where this industry is headed. Deregulation in the railroad and motor carrier industries still leaves us with unresolved questions of safety and economics. There are still too many deaths on our highways. And our maritime industry is in a state of decline that threatens our economy and our national security.

The Secretary of Transportation is the one person in our government—aside from, perhaps, the President—who can set the tone for solutions to these problems. But in order that to happen, the next Secretary must be someone who believes in using the power of his office for this purpose—someone who seek to make the system better rather than just make do. We need someone who believes that government can be a positive and effective force for change.

On the question of safety, we can sit here all day and haggle over free market theories and ideologies. But talk is cheap. And it does nothing to make the transportation system safer for the people whose lives we are bound in our duty to protect. Talk won't bring back the people who died in that crash in Denver the other day. And talk won't prevent future tragedies.

What we need is resolve and action. This Committee—this Congress—wants to move forward and solve the many complex problems that face our transportation network. With or without you, Mr. Burnley, we're going meet these challenges. Will you join us?

Senator Kassebaum has a 10 o'clock commitment, so I want to yield to her at this time.

OPENING STATEMENT BY SENATOR KASSEBAUM

Senator KASSEBAUM. Thank you, Mr. Chairman. I very much appreciate it. I need to be over on the floor on morning business, speaking on something near and dear to your heart and to Senator Exon's as well, I think, and that is fiscal responsibility.

But I wanted to be able to come briefly to wish Jim Burnley the best of luck. While serving as Deputy Secretary of Transportation, he has done yeoman service during some difficult times.

There will be a number of questions that many of us want to ask, and I certainly think it behooves all of us in the important areas covered by the Department of Transportation to expedite the nomination of Mr. Burnley as Secretary.

Thank you, Mr. Chairman.

The CHAIRMAN. Very good, Senator. That is exactly what we want to do, expedite it. And that is why we set this as soon as we possibly could.

Senator Exon, we are waiting for you now.

Senator EXON. I have no opening statement, Mr. Chairman. I have to leave shortly. But I think we should move ahead with hearing the witness at the pleasure of the chair.

The CHAIRMAN. Thank you.

Senator Kasten.

OPENING STATEMENT BY SENATOR KASTEN

Senator KASTEN. Mr. Chairman, thank you. I am pleased to welcome Mr. Burnley and Mrs. Dawson. I am very pleased the President has chosen these two well qualified nominees to lead the Department of Transportation.

Mr. Burnley has been the Deputy Secretary of Transportation for four years and has served, I believe, with distinction. Mrs. Dawson has been a very active commissioner at the Federal Communications Commission since 1981. So I think we have two people who are extraordinarily well qualified for their tasks.

With the safety operations funding and infrastructure issues facing the different modes of transportation, the Administration has nominated for Secretary a person with the experience of Mr. Burnley. He is not only familiar with the issues, but also with the agency he must now lead and administer.

I look forward to continuing to work with him in his new capacity, as his Department and this committee work to address the critical needs facing this country in the transportation area.

I might add that I do not think there has been a time in which we have seen the needs, particularly with air safety, of a more critical nature than just in the past 24 hours, with an accident in my state of Wisconsin, a serious accident in Colorado, and the investigation now going on in Detroit.

Mrs. Dawson has shown herself to be an active Commissioner at the FCC and I know she brings that energy and her abilities to this new position. These nominees will be effective advocates for our nation's transportation needs. With the budget constraints necessary for our nation's financial health, the Department of Transportation I believe will require strong advocates for these important issues.

It also needs administrators who can prioritize the needs within the transportation area itself. I feel these two nominees are well qualified to perform these duties.

I appreciate the chairman setting this hearing and hope, along with Senator Kassebaum, Senator Exon, and others, Mr. Chairman, that we will see full committee action expeditiously, and that it possibly could occur as early as Thursday, and that floor action can follow shortly thereafter.

I thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

We will move expeditiously. We all know Mr. Burnley and we do welcome you, Mr. Burnley, to the committee today. I have one feeling of urgency that I would try to impart, and that is with respect to aviation safety.

You have seen the crashes. I do not know what the statistical results will be. We have been listening to witnesses about how safe it is. We knew all along that we had fewer controllers and yet one third again more air traffic than we had five years ago.

We know of some 2700 pilot deviations. We know of a 40 percent increase in near-misses. And now we have the crashes here in the last 48 hours.

I feel that it is wonderful on the one hand to try to get a 12-point program to reorganize the world, but you and I are not going to be around that long, and we have to go strictly and quickly to the controller problem, to the maintenance problem, to the safety problem, and make absolutely sure for the traveling public that we are not sacrificing safety for profit.

I think that that message must be made clearly by you as the new Secretary of Transportation. And then, of course, we can get into the other transportation problems in rail, trucking and into maritime.

We welcome you. I am sort of filibustering a little because I heard Senator Helms wanted to come and present you. But you already have been presented by two other distinguished Senators.

So we welcome you and we would be glad to hear from you at this time.

Senator Adams, do you have a statement.

OPENING STATEMENT BY SENATOR ADAMS

Senator ADAMS. Mr. Burnley, I welcome you to this nomination hearing. As a former Secretary of Transportation, I have sat where you are sitting today. It may not always be enjoyable for the nominee, but I can tell you that is always helpful to the Committee to have the nominee's views on issues of importance to the Committee.

Mr. Burnley, you come to this hearing with a significant amount of knowledge and expertise on the workings of the Transportation Department. You have been Deputy Transportation Secretary for the past four years and Acting Secretary since September. Of course, I know the importance of the Deputy Secretary's position and the role you play in the day-to-day operations of the Department. I do not believe that anyone can question your technical fitness for the post of Transportation Secretary.

I also want to note that you and I have talked several times before this hearing. We often disagree on transportation policy, particularly on the issue of how deregulation impacts transportation safety. I believe that we should have proceeded much more cautiously in deregulating transportation. Many of the anticipated consequences of deregulation have adversely affected safety and the quality of service.

In air travel, the increase in traffic since deregulation and the unrestrained mergers have created an unregulated monopoly in many regions and have pushed the air traffic control system to the breaking point. To many people and too many planes for the air traffic control system and the ability of airports to carry the load.

Truck deregulation has led to an explosion of new, unregulated carriers and independent operators who have been so hard-pressed by marginal profitability that they cut back on maintenance and needed repairs. As I understand it, you do not make any connection between deregulation and safety. In our conversations, however, you have acknowledged that deregulation cannot work without rigorous enforcement of safety regulations. You have also recognized that working cooperatively with Congress is essential and I appreciate that.

One of the issues of most concern to all of us is airline safety. This week's accidents in Denver and Wisconsin heighten the anxiety that we all feel when we fly or a loved one flys. In my own state, a tragic accident just this month took the lives of the President of Western Washington University and two of its vice presidents. What makes the accident at Bellingham Airport even more tragic is the thought that it might have been prevented by timely governmental action.

1. My first question, therefore, is this: given the fact that air traffic has increased so dramatically in the last eight years; that we actually have fewer air traffic controllers than in 1982; and that flights are now all bunched together at peak times at a few, overcrowded hub airports; can the system handle all this congestion safely and what are the steps necessary to improve the situation?

The CHAIRMAN. I have an opening statement that Senator Pressler would like to have included in the record.

[The statement and biographical sketch follows:]

OPENING STATEMENT BY SENATOR PRESSLER

Thank you, Mr. Chairman, for scheduling this meeting today on the nomination of Jim Burnley to be the Secretary of Transportation. The Transportation Secretary plays a vital role within the Administration and the current vacancy must be filled by a highly qualified individual who knows how the Department ticks. I think that Jim Burnley can successfully carry out the many duties that this position demands and wish him much luck in his coming term.

Many transportation related problems are facing us today. I am particularly concerned about adequate transportation for our rural areas, and hope that Jim shares my concern. In this age of deregulation, we must guarantee that smaller communities are not overlooked. We must focus on airport and airline matters, particularly air safety and quality service at a reasonable price. We need to address railroad issues, including short-line and regional railroads.

We must work to improve our infrastructure and ensure proper implementation of the recently enacted highway bill. There are several aspects of the implementation of the highway act that are of particular concern to me. We are working with the Department of Transportation on these issues and I hope they can soon be resolved.

Jim, as Secretary of Transportation you will be faced with many difficult issues during your term. I hope you will keep us updated on these important matters and work with us in Congress to improve our nation's overall transportation system.

Again, Mr. Chairman, thank you for holding this hearing. I am looking forward to working with Jim and wish him much success in his position as Secretary of the Department of Transportation.

ERNEST F. HOLLINGS, SOUTH CAROLINA, CHAIRMAN
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United States Senate
COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
WASHINGTON, DC 20510-6125

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

(If more space is needed, please use attached REMARKS sheet)

A. BIOGRAPHICAL DATA

1. Name: Burnley IV (Last) James (First) Horace (Other)

Address: 6605 Rosecroft Place, Falls Church, VA 22043 (Current residence)
400 Seventh Street, S.W., Washington, D.C. 20590 (Business)

2. Position to which nominated: Secretary of Transportation
Date of nomination: November 2, 1987

3. Date of birth: July (month) 30, (day) 1948 (year)
Place of birth: High Point, N.C.

4. Marital status: Married
Full name of Spouse: Jane Nady Burnley

5. Names and ages of children: James Horace Burnley V — Age: 16 years
Anne Benton Burnley — Age: 3 years

6. Education:

Institution	Dates attended	Degrees received	Dates of degrees
Ferndale Jr. High	1961 - 1963		
High Point Central High	1963 - 1966	H.S. Diploma	1966
Yale University	1966 - 1970	B.A. (Magna Cum Laude)	1970
Harvard Law School	1970 - 1973	J.D.	1973

7. Employment record: List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

From	To	Name of employer	Address	Type of work
11/83	Pres.	Dept. of Transportation	400 7th St., S.W. Wash., D.C.	Deputy Secretary
5/83	11/83	Dept. of Transportation	400 7th St., S.W. Wash., D.C.	General Counsel
4/83	5/83	Dept. of Transportation	400 7th St., S.W. Wash., D.C.	Special Assistant to Secretary
4/82	3/83	Dept. of Justice	DOJ - Main	Special Assistant then Assoc. Dep. A.G.
3/81	4/82	ACTION Agency	806 Ct. Ave., N.W. Wash., D.C.	Dep. Assoc. Director & Director of VISTA
'75	'81	Turner, Enochs, Foster, Sparrow & Burnley, P.A.	Greensboro, N.C.	Assoc., Partner then shareholder & officer
'73	'75	Brooks, Pierce, McLendon, Humphrey, Leonard	Wachovia Bank Bldg. Greensboro, N.C.	Associate Attorney

(con't on p. 10)

8. Government experience: List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other part-time service or positions.

ACTION Agency - Deputy Associate Director for Domestic Operations & Director of VISTA

Department of Justice - Associate Deputy Attorney General

Department of Transportation - Special Assistant to the Secretary

Department of Transportation - General Counsel

Department of Transportation - Deputy Secretary

Administrative Conference of the United States - Member of Council

North Carolina Zoological Park Council - Member

9. Political affiliations activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last 10 years.

Chairman, Reagan for President Committee of Sixth Congressional District of North Carolina; Chairman, Sixth Congressional District Republican Party; Chairman, Guilford County Republican Party; Member, North Carolina Republican Club of Washington; Member, North Carolina Republican Party Central and Executive Committees

For political contributions, see attached list.

10. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, charitable, and other organizations.

In the past, I have been Vice-Chairman of the North Carolina Young Lawyers Committee on Child Abuse, Chairman of the Greensboro Young Lawyers Committee on Child Abuse, a Director of the Greensboro Bar Association, a member of the Yale Club of Washington, and a Committee Chairman for the Greensboro Kiwanis Club. I have been certified as a commercial arbitrator by the American Arbitration Association. I was a member of that organization, as well as the American Bar Association, the Association of Trial Lawyers of America, the North Carolina Bar Association, the North Carolina State Bar the Harvard Voluntary Defenders (while in law school) and the North Carolina Society of Washington. I am presently a member of the North Carolina State Bar and the Harvard Law School Association of Washington. There are other organizations to which I have made modest contributions, or published magazines I have received which may have considered me a "member" — such as the National Geographic Society or the Friends of the National Zoo, -- but I have played no active role in such organizations.

11. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievement.

While at Yale, I was selected for membership in a national honorary society for political science majors, and the Aurelian Honor Society. At Harvard Law School, I was selected to be Executive Editor of the Harvard Civil Rights - Civil Liberties Law Review. I have also received various Republican awards, the most notable of which is Man of the Year in 1977 from the North Carolina Federation of Young Republicans.

12. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials you have written.

"Deregulation Does Not Conflict with Air Safety", Newsday Magazine, August 1987; "Safety Hasn't Been Deregulated", USA Today, March 1986; "Airline Deregulation - a Major Success", Houston Chronicle, August 1987; "Take My Agency--Please!", Conservative Digest, April 1982; Trial Notebook for Use by Attorneys Appointed as Guardians Ad Litem for Abused and Neglected Children (North Carolina Administrative Office of the Courts, 1987); "Solicitation by the Second Oldest Profession: Attorneys and Advertising", 8 Harvard Civil Rights - Civil Liberties Law Review 77 (1973)

STATEMENT OF JAMES H. BURNLEY IV

Mr. BURNLEY. Thank you, Mr. Chairman.

I believe that both Senators Helms and Sanford may join us along the way. Certainly if I am still in the middle of my statement I will forebear at that point.

Mr. Chairman and members of the committee, I am pleased to have this opportunity to appear before you today. I would like, if I may, to just note that I am particularly pleased to have in the audience today my wife Jane and my 16 year old son Jay, who tonight will get his varsity letter for starting on the offensive line at Mclean High School. I will not tell you what their record was, however, and embarrass him.

I am most appreciative, Mr. Chairman, of the promptness with which this hearing has been scheduled and the willingness of the committee members and their staffs to spend time talking with me over the last few weeks to convey your respective interests and concerns.

I will keep my opening statement brief. As you know, I joined the Department of Transportation in 1983, first as General Counsel, and later that year I became Deputy Secretary.

I believe very strongly that it is genuinely a great privilege to serve in the Federal government, and I am very honored that the President has nominated me to become the ninth Secretary of Transportation. My nomination follows the tenure in this Administration of two very able and talented Transportation Secretaries, Drew Lewis and Elizabeth Dole. The challenges we will face in the future will be every bit as demanding as those we have addressed during the past seven years.

I want to assure you that, if confirmed, I will continue to do my utmost to serve the public interest and to ensure that safety remains the first priority of the Department and our transportation industries.

The two crashes of aircraft carrying passengers in the last 48 hours underscore how important, as has already been noted this morning, it is that safety be our primary concern at the Department. The importance of safe, efficient transportation to this country cannot be overstated.

It enhances the quality of each of our daily lives. It is a major component of this country's economy, representing nearly one-fourth of our gross national product. It is part of the cost of everything that U.S. companies produce and every item that U.S. consumers buy.

America's ability to compete worldwide and American jobs are integrally tied to the national policies Congress and the executive branch set for transportation. The relationship between American competitiveness and an efficient transportation system is more than theoretical. It can be measured in dollars and cents.

For example, I understand that shoe manufacturers in New England shipping their products to Dallas have to pay about $36 per 100 pounds. Transporting the same product from Asia to Dallas, however, costs only $18 per 100 pounds, half as much.

Generally, American-made goods require 12 to 15 movements from raw materials to the finished product before reaching consumers, while imports require an average of one to two movements once they have reached our shores. Thus, inefficient transportation practices can put U.S. goods at a serious competitive disadvantage.

Congress has already demonstrated that one effective way to reduce this disadvantage is to remove unnecessary economic regulations. The Brookings Institution has estimated that airline deregulation, for example, has saved airline consumers and businesses about $6 billion annually, and that is in 1977 dollars.

Similarly, the deregulation of our nation's rail system has literally given the industry new life, after a spate of bankruptcies and billions of dollars in deferred maintenance had severely handicapped our railroads.

Perhaps the best illustration, and one this committee is intimately familiar with because of your key leadership role, is the sale of Conrail. Its turnaround from a money-losing railroad to profitability allowed us to deposit nearly $2 billion in proceeds from the sale into the Federal treasury. That turn-around would not have been possible without the regulatory relief provided in 1980 by the Staggers Act.

Even as economic deregulation has conferred many benefits on American producers and consumers, it has brought major new challenges as well. A freer market in transportation has given birth to new transportation industries and unleashed an explosion in the demand for transportation services.

For example, maritime and rail operators have pioneered double-stack train technology, resulting in tremendous operating efficiencies. Intermodal traffic is the second greatest traffic growth generator for the railroads, increasing over 50 percent since 1980.

In reflecting upon the dramatic changes occurring in transportation, I am both encouraged by the progress we are making in this country and challenged by the potential as yet unfulfilled.

Aviation is obviously an area of particular concern to us all. Just as our ten-year multi-billion dollar national airspace system plan addresses the need for modernized technology for air traffic control, I agree with those who believe that it is time for us to take a close look at the organization responsible for managing that air space.

The structure of the Federal Aviation Administration has been relatively unchanged in recent years, while the aviation industry has changed in ways no one could have foreseen only a decade ago. I want to work with the Congress, the FAA, and the entire aviation community in seriously examining and reassessing the FAA's organizational structure and programs.

The purpose of this evaluation, already begun by the Byrd Commission and by hearings before this committee, will be to ensure that the FAA can continue to guarantee the safest possible aviation system.

Regulatory reform is not the only method by which transportation policies can enhance U.S. competitiveness. As Deputy Secretary, I have taken a strong interest in expanding the international commercial oppportunities of U.S. air and maritime carriers by helping them gain fair, equitable access to foreign markets and to operate efficiently once access has been achieved.

Last year, for example, the Maritime Administrator and I led a delegation to Asia to press for the removal of discriminatory barriers against U.S. carriers. Through such efforts, we have successfully used a combination of negotiations and a willingness to act to fight unfair trade practices.

The explosive growth in the demand for transportation services, its changing structure, and the industry's critical role in the American and world economy means that the Department's safety oversight responsibilities remain of paramount importance.

Safety has been a top priority of both Secretary Dole and this committee, and I intend to carry on that tradition in close consultation with you.

I want to take the opportunity this morning to commend the committee's work in this area. To cite but one example, you led Congress in enacting two landmark motor carrier safety bills, and already we are seeing the successful results of your efforts.

In the four months since the single licensing requirement became effective on truckers, over 14,000 duplicate driver's licenses have been turned in by truck drivers. We are also making progress in implementing the commercial driver's license information system required by the 1986 Act.

This committee also quickly approved legislation, supported by the Department, to conduct random drug testing of individuals in safety sensitive areas of transportation. As you know, the Department is playing a critical role in the fight against drug abuse, both on the demand and the supply sides.

Last year alone, the United States Coast Guard seized $2 billion worth of illegal drugs. However, drug interdiction is only one of the many critical missions performed by the Coast Guard. Adequate resources for search and rescue, marine safety, and military readiness are more important than ever.

I look forward to working closely with members of this committee and others in the Congress and the transportation community to ensure that the safety of our nation's air, highways, rail and waterways continues to improve.

Let me conclude my statement by thanking you for this opportunity to appear before you, Mr. Chairman, and to express my appreciation for the courtesies that members of this committee have shown me during my tenure as Deputy Secretary.

The CHAIRMAN. Thank you.

Senator Helms, do you have a statement on behalf of the witness? We want to welcome you to the committee.

STATEMENT OF HON. JESSE HELMS, U.S. SENATOR FROM NORTH CAROLINA

Senator HELMS. Mr. Chairman, you can hereinafter refer to me as the late Jesse Helms.

I was tied up over in a meeting at another committee upstairs, the Rules Committee.

The CHAIRMAN. Now, you do not want to overjoy this city, do you?

Senator HELMS. Just the State Department.

I thank you for recognizing me out of turn, here.

And Jim, I apologize to you for being late, but I enjoyed hearing your statement. It is my pleasure to be here, and to present Jim Burnley. Jim is an extraordinarily well qualified man for this post.

He first served this administration beginning in 1981 as the Director of Volunteers in Service to America, or VISTA. In 1982 he moved to the Department of Justice as Associate Deputy Attorney General. In early 1983 he moved to the Department of Transportation and served as General Counsel until becoming Deputy Secretary in 1983, and he has served as Deputy Secretary for almost precisely four years.

Jim comes well qualified educationally. He is a magna cum laude graduate of Yale. He holds a juris doctor from Harvard Law School, and we will not hold that against him.

In this nomination we have two firsts. He is the first Deputy Secretary in the history of DOT to be nominated for Secretary, and he is the youngest person ever nominated for the job.

I think we would have a difficult time finding a more qualified candidate to succeed Elizabeth Dole as Secretary of Transportation. And I might point out that outgoing and incoming both are North Carolinians.

Mr. Chairman, I commend this young man in every possible way, and I thank you for the opportunity of being here this morning.

The CHAIRMAN. We thank you very much. Are there any questions?

[No response.]

The CHAIRMAN. I know you have another hearing to attend downstairs. We do appreciate your appearance here today.

Mr. Burnley, what do you intend to do to improve aviation safety?

Mr. BURNLEY. Mr. Chairman, the list is quite lengthy, both short term and looking a little farther down the road. As the committee is aware, Secretary Dole and the administration sought a 20 percent, which translates into a $1 billion, increase in the budget for fiscal year 1988 for the FAA.

It looks as if, particularly in the Senate version of that budget, we have a very good chance of getting the full funding. I expect that we are going to have to ask the Congress in fiscal year 1989 for additional resources. We are going to have to continue to beef up the controller work force. We are going to have to continue to beef up the number of inspectors we have got.

With the 1988 request, we will have the number of aviation inspectors at the FAA at an all-time high in its history. But I think we are going to need more, and we will be back to you for more.

We have got to be sure that the NAS plan gets adequate funding in the next few years to keep that on track. But most importantly, Mr. Chairman, we have got to be sure that the airline industry itself is not allowed to slack off in any way, shape, or form, whether it be in their maintenance procedures, whether it be in their pilot training, or any of the other critical safety responsibilities that they have day to day.

The Department of Transportation and the FAA have the policeman's role, and I think that with adequate resources that role can be carried out effectively in the near future, and I think it is being carried out effectively today. But ultimately the industry itself has got to be aggressive in making sure that it is as safe as it possibly can be.

And I both welcome and fully support and am comfortable with the recent actions taken by the new FAA Administrator, Allan McArtor, to re-emphasize with the industry the importance of it accepting responsibility. It is not that it in any way relieves us of our responsibility. All I am saying is we have to be very aggressive as a traffic cop and the overseer of safety.

The industry leadership has got to be extremely strong in making sure their day-to-day practices leave nothing on the safety side overlooked. But I do think, Mr. Chairman, there is a basic underlying issue here. Various members of the DOT staff and some people on the outside in recent months have from time to time brought to my attention newspaper articles, magazine articles, even a couple of books, from the 1950's, the 1960's, and early 1970's.

The reason these were brought to my attention was the rhetoric in these various written materials was verbatim like much of the rhetoric we have had this year on aviation safety issues.

I recall in particular seeing recently a Life magazine article from the early 1970's that talked about a shortage of controllers and that the air space was overly congested and that we had rising near mid-air collisions. It could literally have been lifted out of the newspapers this morning.

I think that is symptomatic of an issue that is already getting some attention, but needs further attention. It has been a very long time since this country looked at the fundamental structure of the Federal Aviation Administration.

So while addressing the short-term needs of this year and next and the year after that and making sure that we have all of the resources possible, I think simultaneously the Congress, the Administration, and the industry have got to look at the fundamental structural question. And I think we have some work that can be done in that area that will, at least at a minimum, make it much easier for the FAA to do its job and give it additional flexibility.

It may be, however, that we need to go beyond marginal changes in how they do their business, and I plan to work on both the short term and the long term issues.

The CHAIRMAN. I like your answer. Do you need any additional resources down there immediately to bring on any outside expertise or otherwise to move a little bit more expeditiously?

Mr. BURNLEY. Well, sir, the problem that we have right now is not so much resources this week or next week. I must say that the primary risk we have in the immediate future would be if, under the act that you are intimately familiar with, we have to sequester.

I hope and expect that we will be able to see an agreement between the Administration and the Congress on the necessary budget cuts. That is a critically important exercise, as we all know.

I know you feel very strongly about the importance of it. If that exercise fails, however, and we have to sequester, because of the inability of the FAA and the Department to move money from one account to another, we will have to take rigid across-the-board cuts in each and every account.

We could face overnight a 15 percent cut in the FAA work force. Not only would we not be able to hire anybody new, but we would literally have a disaster on our hands in terms of our ability to function over there day-to-day.

The same is true for the Coast Guard, the same is true with the Office of the Secretary, with the people who handle consumer complaints and other aviation services.

I think we will all know in terms of the short term needs in a few days, once we get to November 20th, if sequestering occurs. And, yes sir, I am going to need immediate help from the Congress in getting the flexibility through reprogramming or new legislation or whatever it takes to be sure that the FAA can use the resources it has now.

Assuming that we get, without that kind of cut, the FAA 1988 budget that we have requested, again we will have an inspector work force in the months to come at an all-time high. We will be adding another 1,228 people in the controller work force.

So we will be in good shape in the months to come. But it is that across-the-board, account-by-account cut that has us all worried right now.

The CHAIRMAN. Well, as the author of that sequester, of course, it has been my hope that the budget conference will adopt that alternative and that we will move on it in the Congress.

If a sequester does come this week, you and I will be together on Monday and I will prepare an emergency or supplemental of some kind.

Mr. BURNLEY. Thank you, sir.

The CHAIRMAN. I know every Department will want one of those, but I am confident that we in the Congress would approve yours, because we cannot be fiddling around here with public safety.

I have a lot of other questions on mergers, the hubs, and everything. But we are going to have to hold to the rules here.

Senator Kasten.

Senator KASTEN. Mr. Chairman, thank you very much.

Mr. Burnley, you have written a couple of articles having to do with the relationship between deregulation and safety, the underlying premise being that safety has not been deregulated in the process of deregulating the airlines. A number of people, particularly over the last several days, have been talking about the dangers of deregulation, and in fact that safety has been one of the things that has been compromised in the process of airline deregulation, lower prices, more people flying, et cetera.

Do you still maintain that safety has not been deregulated?

Mr. BURNLEY. I maintain that, Senator, and I welcome the question. Thank you for asking it. I maintain it in the strongest possible terms.

For those of us who believe that economic deregulation has been one of the great success stories in recent years, if you think about, taking a step or two back, what are the things that bother those of us who fly fairly frequently, well, you know, the airplanes are full. The airports are full.

In fact, somebody commented the other day, they are like bus stations used to be. This is one of the great populist reforms in recent years. That is right, they are like bus stations used to be. We put the intercity bus industry in this country in desperate economic straits because so many people today can afford to fly who have never been able to afford it before, and that is because of the actions the Congress took in 1978 and that it renewed and reaffirmed in 1984.

There are those of us who believe strongly that it has been successful and that there are growing pains, there are service issues that have to be addressed, but that the fundamentals are strong as a result of economic deregulation.

I and others of that belief have a particular burden to bear, I think, in making clear on the one hand and in making sure on the other that safety is not deregulated. It is important that the FAA be more aggressive than ever before in its oversight of airlines on the safety side.

We cannot even speculate, or allow there to be a basis for speculation, in my judgment, about there being a slacking off in maintenance practices or crew training practices or any other safety-related practices because of economic deregulation.

We have to redouble our aggressiveness and our oversight. In the four and a half years I have been at the Department, as you know, that has been a particular interest of Secretary Dole. She worked very, very hard on that, literally every day during her tenure.

There is a strong foundation there, but we have a rapidly changing and growing industry, and there is going to be a lot more to do even in the year remaining in this administration.

So I would say that I feel a particular obligation, because I do believe economic deregulation has been successful, in speaking out within the Administration and then coming to the Congress and seeking whatever resources the FAA needs to do its job.

It just cannot be the case that we skimp on the safety side.

Senator KASTEN. Mr. Chairman, I am going to yield back the remainder of my time, but I had some questions dealing with the computer reservation system used by travel agents and a number of other questions which I would ask be submitted for the record and that we give Mr. Burnley an opportunity to respond to in writing.

The CHAIRMAN. Good. They will be included in the record.

Senator Exon.

Senator EXON. Mr. Chairman, thank you very much.

Mr. Burnley, welcome here, and thank you for coming by to see me so that we could discuss some of the things that are of particular interest to the people of America.

There is a lot of focus today on the airline industry, and justifiably so. We talked about that some when you were in my office.

Let me ask you to state for the record your view as to the wisdom of continuing a $5 billion to $6 billion surplus in the Aviation Trust Fund in view of the shortcomings generally of our aviation safety and regulation and building programs as of today.

Mr. BURNLEY. Senator Exon, I am very frustrated by that surplus. I think it is important to pause for a moment very briefly, because it would take some time to go through all of the complexities and comment on why we have that surplus. It is not that we have not spent money.

In fact, since the FAA Trust Fund, the Airport and Airway Trust Fund was last reauthorized by the Congress in 1982 for a five-year period, we have spent through the Federal budget process in excess of $27 billion on aviation needs in this country. Of that $27 billion, only about $16 billion was funded by the Trust Fund. The rest of it came out of the general account of the Treasury.

So we have built up that balance, and it has been the administration's view and my view personally that that should not have happened. We had a disagreement, and the Congress is of the opinion that certain resources should be applied to certain programs, particularly the Airport Improvement Program, and that if the appropriations process did not yield the results that had been sought through the authorizing legislation in 1982, then the result would be that we would have to find additional funds out of the General Fund.

When you really look at it, those are accounting issues. I do not think the Congress or the executive branch should get distracted by them. We can respectfully disagree about which account we ought to pay for these needs out of.

Once that issue is resolved, however, and the reauthorization legislation that you are working on right now, that you will have a conference on shortly, as I understand it, is passed, the fundamental and far more important question is what resources from whatever account we get them are we going to apply to our aviation needs.

As Secretary Dole has done, I will be back to you, looking for additional resources. I think it is important to note that during the time I have been at the Department, the FAA budget over all has increased 50 percent and that there will be more that we will need to do.

I think the answer to your question is the trust fund balance ought to be drawn down, but it ought to be done and we ought to be concerned about it as a secondary issue. The issue I hope we can stay focused on is how much and then, secondarily, from which account do you get the money.

Senator EXON. Well, while the funding has gone up by 50 percent, to use your accounting methods—which may be right—the problems have gone up 100 percent.

You are not saying, then, that we should not draw down that trust fund, either draw it down and use it for what it was intended or to eliminate the tax or the fee for those who purchase tickets. Is that a fair summation of your position?

Mr. BURNLEY. Well, sir, I think it is fair to say that what I would like and hope that the legislation that comes out of the conference and that you send to the President says is that the resources needed by the FAA can be funded to the extent possible out of the trust fund and that the Congress, of course, as it always does each year through the appropriations process, will make decisions about how much you spend on which account.

The penalty clause, as it is called, which prevents the Congress from later using those balances unless certain amounts are set aside for certain needs that came through the authorizing process, means that there is some risk that even while I am back asking, if I am confirmed, for more funding from you, you are busy appropriating more in answer to those requests.

We could see those trust fund balances go up some more if there are penalty provisions in there. I would think that the important issue again would be how much and can we find the resources in this country necessary to meet those needs. The answer to that, of course, has to be yes, and we have to find them, as the Chairman said a few minutes ago.

Senator EXON. If you have some means to clarify that and get that money used for what it was intended, I think we would be more than receptive to that, given the difficulties that we are having budgetwise today. To see a trust fund sitting there of $5 billion or $6 billion and not being tapped or used really does not make any sense. I think that should be so established.

Mr. BURNLEY. That is right. I agree with you.

Senator EXON. Let me get into another general area in which I suspect we are going to be dealing when you are confirmed in this important new position, and that is how you view the effectiveness of the Interstate Commerce Commission today in carrying out the various measures that Congress has passed, including the Staggers Act.

Do you think that they have been responsible in their positions? Can you explain to me why we continually have a three to two split on that committee on everything from the matter of sales of short line or regional railroads to captive shippers? Both are things that most of us feel were properly addressed in the Staggers Act but are not being acted upon as the Congress had intended, in my view, by the ICC at least under the present makeup.

Mr. **Burnley**. Senator, I have to be somewhat circumspect just because I do not want to be guilty of getting over into areas of the Interstate Commerce Commission's jurisdiction in which I do not belong if confirmed as Secretary of Transportation.

As you know, we have proposed and, in fact, it was a part of the President's trade legislation package, that the ICC be sunset. So there is sort of a fundamental Administration view about the ICC.

We think that certain of their responsibilities can be sunset with them and that others could be assumed at the Department.

As to the three/two split, I think you have five people over there who have genuinely heartfelt views in each instance but whose views differ and who tend to vote along those lines.

I and the Department, of course, had nothing whatsoever to do with the appointment of those people. Those were presidential appointments with Senate confirmation.

I do think that we have some opportunities where the Commission can improve its handling of certain issues that are important, in the railroad area in particular.

For example, just last week the Department filed its views, as we often do in particular proceedings at the ICC, on how they should review short line proposals where a railroad is going to sell a chunk of track to a new operator. We proposed in our filing that there ought to be more advance notice, that there ought to be a longer review period, and that the parties to the transaction ought to have some increased information requirements imposed upon them.

On short lines in particular, yes, sir, we are on the record in just the last few days as suggesting there are some change that should be made.

I think that in recent months we have seen some improvement over there in terms of how some of these issues are handled. I know on the issue, for example, of joint route cancellations that, as you are aware, the Association of American Railroads and one of the large shippers groups, the NIT League, the National Industrial Traffic League, did work out a compromise about a year ago that the Commission has adopted which, I think, enhanced the procedures over there.

I have, on the one hand, had the view that Staggers has really, as I said in my prepared remarks, rejuvenated the railroad industry.

On the other hand, I do genuinely believe there are, in fact, some captive shippers in this country, and their interests do have to be protected. The question is how the Commission goes about that business from day to day.

So if I am confirmed, I will not hesitate to make appropriate comments in proceedings over there if there are opportunities to be sure genuinely captive shippers can be better protected.

Senator EXON. Thank you, Mr. Burnley.

Thank you, Mr. Chairman. My time is up.

The CHAIRMAN. Thank you, Senator.

Senator McCain.

Senator McCAIN. Thank you, Mr. Chairman. Mr. Chairman, I have some written questions I would like to submit for Mr. Burnley to answer for the record.

The CHAIRMAN. They will be included.

Senator McCAIN. Thank you.

Mr. Burnley, congratulations to you on your selection for this very important job. I also am impressed by the selection of your deputy, and I am sure that you and Ms. Dawson will make a very impressive and well-experienced team. I do not have to tell you that you have a tough act to follow.

I would like to discuss a couple of items with you as sort of a follow-on to, I think, a very fruitful meeting we had in my office.

In the written questions that you were given, question number three stated, "If confirmed, will you support higher AIP funding levels and work to achieve full funding of the authorized level in the next year's budget request?"

Mr. Burnley, I thought your answer was a little equivocal. Could you be a little more definitive on that for the benefit of this committee. I believe that most of us on this committee believe that one of our major problems has been insufficient funding and insufficient appropriation levels.

Mr. BURNLEY. Yes, sir. My answer was, I absolutely agree, a little bit equivocal. It comes from the difficulty I have by being the Acting Secretary of Transportation while being also in the confirmation process for being Secretary.

I am bound by the normal processes of preparing the budget. It is the President's prerogative to announce his budget proposal for Fiscal Year 1989 shortly after the first of the calendar year, and it does put me in a somewhat awkward situation. I am not supposed to be unveiling his budget for him either in my written answers or in my testimony today.

So I did try to walk a fine line there, but the signal that I want to send very clearly to the committee and to the Senate and to the country is that we need, in my judgment, more resources applied in the aviation area across the board.

There are no needs in aviation that are going to decline in the next few years if our economy continues to grow. Economic recovery and economic deregulation are putting additional demands on all aspects of the aviation system in this country, and we have to work at making sure the resources are there to meet those demands on the Federal side.

So the answer to your question again, if I may equivocate slightly but I hope you will understand why because of the budget processes, yes, sir, I agree. We have to have more resources. As to what will be proposed in a particular account in the next budget, we are in the process right now of talking with OMB, and we have made our views known quite clearly over there.

Senator McCain. Thank you.

I agree that you are constrained by the budget process, but I believe also that you should be a strong advocate for the principles that you just articulated. I hope that the committee can be assured of that.

Mr. Burnley. Yes, sir. You may rest assured.

Senator McCain. I would just like to go over with you again an issue that continues to concern me and, I think, most Americans; that is, this situation that appears to some of us to be evolving as that of a de facto reregulation.

We have airports where there are no landing slots and other airports where there are not only no additional landing slots but there is as much as 70 or 80 percent of traffic in and out of that airport which is controlled by one airline. We continue to see mergers, the latest of which a judicial opinion was overruled by the Department of Transportation. That, coupled with a lack of construction of new airport facilities, and I think 1978 was the last new major airport in this country, could result in a situation where over time there could be enough control of the market by an airline or two that we would have an increase in fares after the competition has been squeezed out.

I know you and I have discussed that at some length, and I also know that you are in the process of a rulemaking concerning the situation as far as landing slots are concerned.

I hope you will address this issue and address it in a very serious fashion, because I think that the enormous benefits that you so well describe which the American airline consumer has experienced could be very dramatically and rapidly eroded if we have major airports in this country controlled by a single airline or two airlines.

I would appreciate your views on that again for the benefit of the record.

Mr. Burnley. Senator McCain, I agree entirely that perhaps the primary challenge in the next 10 to 15 years in this country is a challenge we face today. On the other hand, it is a continuing challenge. It is going to be the capacity of the system, so that anyone who wishes and can demonstrate to the Department and the FAA that it is competent to provide commercial airline service safely will be able to do so.

We have a growing problem in this country that you have described, and that is airport capacity. We could double the controller work force. We could have all of the new computer and other high tech equipment which we are in the process of putting in place over the next several years in place tomorrow, and it would help but it would not address the fundamental capacity problem because you are exactly right.

The last time this country opened a major commercial airport was in the mid- to late 1970s at Dallas-Fort Worth. When you say that to people, very often they are startled by that.

The only plans I know of under active discussion today in this country for a comparable facility are out at Denver, and I think probably the committee would agree unanimously with the view that we have to have additional large airports in this country, and we have to have medium-sized airports as well. We have to have reliever airports.

It is an issue which raises enormous emotions in local communities, as we all know. I do not have a magic wand to wave to resolve that issue. All I can say to you is that I understand that it is a very serious problem and agree it is and intend to do what I can if I am confirmed to try to move us toward a better understanding of that problem. That is the first problem we have to address, awareness.

Then we have to see if we can quickly build a national consensus that will permit us to get on with the business of making available to the airline industry and to general aviation as well adequate airport facilities. It simply will not happen by chance.

It is going to require affirmative leadership. It is going to require not only leadership on the national level but aggressive leadership on the state and local level. What we ultimately find in these instances when talking about expanding an airport is tremendous local opposition to the very idea.

Clearly, we have, I think, other problems out there in aviation which we are going to have to work on; but when you get right down to it, this is the one that probably looms over all others in terms of the ability of this country to handle the genuine demand of both commercial and general aviation in the years to come.

Senator McCAIN. Thank you, Mr. Burnley.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Mr. Burnley, I told you when we met privately that I am going to support your nomination, and I am going to look forward to doing it.

I also mentioned, and you triggered it with a statement you made this morning about the blessings of deregulation, that many of us on this committee and certainly this Senator represent very real states and that deregulation has, at the very best, represented a mixed blessing.

In terms of buses, there are relative few of them any more in West Virginia.

In terms of major airlines, most of them departed shortly after deregulation.

In terms of railroads, Senator Exon asked some very pertinent questions about the Staggers deregulation Act. The Staggers Act was an excellent act of deregulation, but, again, where there were captive shippers, most of those being in rural states, they have suffered.

The list goes on.

I just want to say that the problems of rural America are more vulnerable now than ever before because of budget deficiencies. When there are budget deficiencies, these people look for efficiencies, and efficiencies usually leave those with the least resiliency by the wayside. We have seen that in Appalachia and other parts of our country.

I would like very much, on the subject of essential air service, to go over a conversation that you and I had which I thought was useful.

You indicated that the administration was not going to support that. Of course, as a member of the administration, that would have to be your position. If, however, it were authorized and if the money was put in by the Congress, as it has been, you would, in fact, be sure that it was implemented fairly and properly.

Am I correct in that?

Mr. Burnley. Yes, sir. Senator, I think it is important to note that we had an Essential Air Service Program created by the Congress in 1978 when it began the deregulation of the airline industry. I have a recognition of just the concerns that you have so eloquently outlined about rural areas.

We in the administration, because of these enormous deficit problems that we all are grappling with together, have proposed that that program not continue. It was originally set up in 1978 as a 10-year program. This is not out of disinterest or insensitivity.

I think it is fair to say that the program has been useful but, as the Congress had originally intended, it was to have a 10-year life and, given other competing demands, on the whole the administration position was one that we could take in good faith.

In my statement, I said that I consider it a great privilege to serve in the Federal Government, and it is. Once we have had the policy debate and the Congress has legislated and the President has signed or, as occasionally happens unfortunately from the executive branch perspective, he vetoes a bill and is overridden and it becomes law, then I view it as extremely important that those of us who administer programs day-to-day carry them out in good faith.

I do not believe once the legislation is on the books that we should try to extend the debate or play with the margins. If we want to come back to you with a proposal for an amendment or change or repeal of a program, I certainly reserve the right on behalf of the Department to do that.

Once you have told us what the law is, however, we have to vigorously implement it. With respect to the Essential Air Service Program in particular, I think that the Civil Aeronautics Board, before it went out of business, had a good record in administering that program, did it fairly and evenhandedly.

Since we have assumed those responsibilities on January 1, 1985, I am very proud of how we have handled it. I think that the record would show that the program has been handled in an impartial and evenhanded way and that the good purposes of it we have tried in good faith to fulfill.

I will continue to do that if the Congress extends it.

Senator Rockefeller. I appreciate that answer. I consider it constructive and useful.

You and I also discussed something which I will not get into in full here, but it is the interesting matter of the Appalachian Regional Commission, which is not necessarily your jurisdiction, and the problem of the completion of certain roads.

Here, I talk in a very parochial sense about West Virginia. We have two four-lane roads, corridor G and corridor H, which were meant to be completed by the Appalachian Regional Commission. When I became governor of West Virginia back in 1977, I think the Appalachian Regional Commission budget was about $1.5 billion, maybe more. Now it is down to about $150 million. Every year it goes down by 10 percent.

It costs about $11 or $12 million to build a mile of four-lane road most anywhere in West Virginia because of the mountainous terrain. The result is that we are now doing about a mile a year, which is sort of absurd, really, when you consider that we have a number of miles to finish. It will probably cost over a period of time $300 to $400 million just to finish corridor G, which goes through the coal fields of southern West Virginia. Corridor H is another and important matter, also.

In your cabinet position, which I hope that you will be successful in getting, I hope you will keep an open mind in ways other than simply Applalachian Regional Commission funding or perhaps tradeoffs within that formula; that we, together, can look for ways to try to equitably and reasonably promptly finish corridor G and corridor H.

You and I discussed that, and I am not putting that all out on the table, but I was pleased at that time by your openness of response when we were talking. I would simply like to spread that upon this particular hearing record.

Mr. **Burnley**. Sir, I welcome having it spread. I think it is important to say that when you speak to the interest of your state, in my judgment it is not parochial.

In fact, that is at least half of why, as I understand it, you are here, to make sure that not only is national policy set in ways that you deem appropriate but also that the interests of West Virginia are well represented and effectively represented, as is certainly the case with you.

I am open to looking at ways in which we can address particular problems that have an impact on particular states.

If I might take advantage of your question to broaden the issue slightly, I think that, having just reauthorized the Federal Highway Program, there may be some understandable reluctance in the Congress if I were to come up and say we need to redebate the Highway Program. I certainly do not intend to do that.

On the other hand, this last reauthorization does contemplate the completion of the interstate highway system in this country, and I think it will be appropriate over the next year to begin the discussion about what the appropriate Federal role will be after the interstate system is completed.

I am particularly concerned about the rigid formulas and the inflexibility that typify the way the program works today that make it frustrating for you and, frankly, frustrating for me to address an issue of this sort.

That is the way the program is structured, and I think it would be very useful over the next year to work on the underlying question as well of whether, in looking at the next reauthorization round, we can at least build a lot more flexibility into it. We may well want to go beyond that.

I believe very strongly we have to have a Federal presence in the interstate highway system, but I believe also that there is room for improvement regarding rigidity with the way in which the entire Highway Program is run in this day and age.

I have just been through a very frustrating exercise of the sort which I know is difficult for me to understand, and I would expect no understanding in other quarters except perhaps Senator Adams who, as former Secretary of Transportation, dealt with these sorts of problems, too.

The simple issue of permitting the states that wish to do so to let telecommunications companies lay fiber optics cables down highway right-of-ways is an issue which the Congress has been urging us to get on with for two years. We have been trying to get on with it.

The rule package showed up on my desk a few days ago, and the proposal was that the Federal Highway Administration would have to look at every single one of those projects one at a time. It is back downstairs being rewritten. That is crazy, in my judgment.

It is that kind of rigidity that makes issues of the sort you have alluded to difficult for us to be as responsive on as I frankly think we should be.

Senator ROCKEFELLER. Thank you, Mr. Burnley. And thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Adams.

Senator ADAMS. Thank you, Mr. Chairman.

Mr. Burnley, I am pleased that you are here. I have been in the spot that you are and I am going to have to be in an educational process with you. I do support your nomination, but I want to state some concerns that I have in particular about your statement.

And that I will submit some questions in writing.

Mr. Chairman, you have come out of the Deputy's spot. Traditionally the Deputy's spot handles processes, reorganization, and so on. I would strongly urge you not to spend your next 18 months doing reorganization of the FAA, and I will just give you an example from my state that we are both familiar with.

It is tragic. It is not necessarily your fault, but it will not be cured by a reorganization of the FAA. You and I talked about replacing a tower in Billingham, Washington, because it had had a great flow of traffic. You said that you would try to get me a temporary one.

After that you wrote me a letter and said that it would take some time, that this would happen. I urged that it be done. As you and I both know, within the week that I called you the president of the Western Washington University and two vice presidents were killed because there was no tower.

Yet I get a letter from you on the 16th—and I am not critical of you; I know where these come from—and it says: "As we discussed, report language accompanying both versions of the fiscal year appropriations," and so on, "including one especially to be located in Billingham, Washington, the FAA has informed me that it will take between 18 and 24 months to procure a new mobile tower for Billingham to replace the tower temporarily reassigned to meet the needs you outlined in our conversation."

Mr. BURNLEY. Senator, I do not want that letter misunderstood.

Senator ADAMS. I am not going to leave uncovered the fact that you have tried to move a tower from Oklahoma because they moved it out of Billingham and down there.

Mr. BURNLEY. Well, the letter may be wrong and I would like to correct it, because what the letter is intended to convey to you is that the permanent installation of a temporary tower is 18 to 24 months off, but we are going to get you another one in the very short term, so that you do not wait 18 to 24 months for that tower.

Senator ADAMS. And I wanted to state that we are hopeful that the one that is sitting down in Oklahoma City will arrive.

What I am saying to you is that the problem in the FAA and the Federal Highway Administration and each of the Administrations is, if you spent your time reorganizing—and I spent two years and when I got finished they were still reorganizing—I think your problem is to make them move in terms of carrying out without the long term procedures in emergencies. I just use that as an example in my state, and I know it happens elsewhere.

What I am concerned about, and I wanted to just state it to you and I appreciate your calling on me and we will have further discussions, is that when we went into airline deregulation the things that are happening now were anticipated by all of us.

What has occurred is that there has been no enforcement of the fare zone. They dropped the LPP's, they dropped essential air service, and they dropped a lot of the enforcement programs.

Now, that was during the shift and deregulation has done this. It has created an unregulated monopoly in all the smaller cities in the country. It has turned the subsidy upside-down. It costs you more to fly a shorter distance because we have in effect unregulated monopolies.

Mergers have been allowed to go forward. There is no control on price, and there has been no control on slotting.

Now, all of this was known when we started. What I am concerned about is that if we continue to say that the system has capacity and to allow the free market to run smaller hub airports, control slots, control the air flow, your safety is going down, your quality of service is going down.

The comparison of fares of one passenger sitting next to the other passenger is sitting down and is unfair. And the scheduling does not exist because there is no government control to say you must be fair in what you price.

We knew all this because the cost of a seat in a plane that is fully staffed, gassed and taking off, the empty seat has a zero cost value. So it automatically drives the marketing situation, not like in any kind of department store, but to lowering your fares and giving different fares to every class to try to fill it.

Now, when that happens and you've got a concentrated market, your fares there drop, so your airlines do not have the money to continue maintenance. The only way they can do that is to go and capture a hub, push everybody else out, and raise their fares.

It is why it costs the Chairman twice as much to go to his home town as it does to go round trip to Miami, which is about three times as far. The same thing is true if I go into New England. The same thing is true in trips to Seattle.

And as we have done this, what I am concerned about and I want you to talk to—and I will do trucking another day with you—but with the airlines, you are flying a bank in and a bank out. That is, eight flights in and eight flights out of these small airports, and they all hit at the same time and they all take off at the same time.

And there is no slack in the system for weather. You are not controlling nationally who takes off at what time, so they are all saying they take off at one time, and they do not. They cannot possibly. The runways will not carry them.

I want to know how you are going to use the regulatory system to improve quality of service and safety, because what we have had happen this week is—I will just tell you right here, just state it, I know it is bad to make prognostications—but you are going to have an increase in accident rates because you are overflying the system. You are overflying the controllers, you are overflying the airports, you are overflying the weather.

And you are using a lot of people without the long time training that you used to have, both in the air control system and the piloting system. I am concerned about the response that it is not revamping the FAA, because the only revamp you could have is that the FAA system inspects companies, not planes. It does not inspect individuals.

You have got a lot of companies, and you have got companies in mergers. That inspection is tenuous. I just want to know how you fit regulation to quality of service and to safety.

Mr. BURNLEY. Well sir, let me try to take a stab at that. I think it is important to step back to the first thing that you noted in my statement. During the time I have been Deputy Secretary, I may have been the most disinterested Deputy in the government, and certainly perhaps in the Department's history, in moving boxes around on plans of organization.

There is a great tendency in the executive branch when you take a new job at any level that you have to reorganize. There is a lot of thrashing that goes on. People get distracted, they do not do their regular jobs.

Senator ADAMS. And it is thrashing.

Mr. BURNLEY. And it is thrashing. I have always had the view that there had to be some point to it. I am not opposed to reorganization *per se,* but there has to be a substantive underlying point to it.

I think there is in this case but I want to be very sure I make clear both what I am thinking about conceptually and working with you on, and what I am not thinking about. I am not thinking about simply moving the boxes around.

But there are some fundamental underlying issues. We on the one hand have got a safe system. We have got worries, we have got strains. We all agree we have to do more. The difficulty that I have seen day-to-day over there—and it is one that I know you are intimately familiar with from your time at the Department—is that the Federal Aviation Administration institutionally has a great deal of difficulty changing its practices.

We have a rapidly changing industry and a slow and to some extent lethargic FAA to oversee them. There are great advantages to a cautious bureaucracy when you are talking about the kinds of issues that we talk about in aviation, when you are talking about running a system as complex as that.

I am not suggesting that we ought to change how we handle air traffic every six months. We would have a real disaster if we tried to do that.

Senator ADAMS. Just please take the state of the art and put it in, and do not keep trying to jump ahead every three years.

Mr. BURNLEY. But here is the difficulty on the other hand, as a very good example. If we run a procurement at the FAA perfectly from day one to the day everything is in place, and we do not have any software problems, and we do not have any problems on delivery of the hardware from the manufacturer, and we have got all the money we need, and it gets put in and it works the first time we start it up, if we do all of that perfectly, the way the Federal procurement system works on a complex procurement—and we have got some very large, complex ones, as you know—if it works perfectly, there is a very good chance by the time we install the technology that it will at least no longer be state-of-the-art, and it may be obsolete.

The General Accounting Office did a study of how we have handled what we call the national air space plan, our $12.2 billion ten-year plan to replace all of the hardware and software that we are halfway through, in terms of years, and with about 90 percent of the contracts signed.

They put that study out last spring. What the GAO said was that, while the Department, it said, in the preceding 18 to 24 months had done a better job of putting rigid oversight and clamps down on the FAA, that prior to that time we had been too relaxed. We had not required enough information. We had not put the FAA over enough hurdles.

And on the one hand, I was pleased that we were getting some praise for having tightened up. But on the other hand, I think the underlying question there that we must look at is the question of whether that whole process makes sense. And I am not sure it does any more.

It might have made sense 30 years ago, but I am not sure it does today, and particularly given the fact that this technology evolves as rapidly as it does. The whole air traffic control system in this day and age is entirely dependent on computers, and we all know the rate of change in the computer industry.

It seems to me that it is worth looking at that level of the structural question, not who reports to whom inside the bureaucracy day-to-day. I frankly am disinterested in those issues and always have been in my time at the Department.

But I am very interested and concerned, and I want to work with you and the other members of this committee, on whether there is a better way to free them up so they can do their jobs better, so we at least have a fighting chance that when the procurement is over we will have technology that is still state-of-the-art or close to it.

And that is the difficulty that I am trying to address when I raise that issue.

Senator ADAMS. Thank you, Mr. Chairman. I know I took more time.

And incidentally, you will not get another airport, so you had better deal with that capacity. We had three in 1977, The Everglades, New England, and Los Angeles, and not one of them ever came to pass.

The CHAIRMAN. Thank you.

Senator Breaux.

Senator BREAUX. Thank you very much, Mr. Chairman.

As a freshman member of the Senate, I kind of thought I was not going to be involved in any of these Cabinet confirmation hearings because I got here seven years too late. And lo and behold, I find that we are kind of doing it all over again, all of the various confirmation hearings that we have on people who are leaving and people who are coming on board.

I think it is important when we have a person who is coming in with this amount of time left, it is important that that person come in with some background and experience. You do not have a lot of time to learn the job. We can differ with some of your policy approaches, but I think that there is an opportunity to provide continuity here.

It is also an opportunity to reflect on past mistakes, perhaps, and to improve upon those.

I would like for a minute to talk about the Persian Gulf and our maritime policy dealing with that. That is under the Department of Transportation. I have called the policy "rent-a-flag" because it seems to me what we are doing is renting out the American flag, sticking it on the stern of a foreign ship with a foreign crew.

I said, if it is important enough to have the American flag in the Persian Gulf—and incidentally, I think it is—that it is important enough that it be carried on American ships with American crews.

The Department of Transportation through MARAD has attempted to try to correct that problem. But what we are doing, I think, is doing it in a manner which is detrimental to the American industry, the merchant marine industry.

We have got studies all over the place, the last one being the Commission on Merchant Marine and Defense, that says there is a clear and growing danger to the national safety and a deteriorating condition of America's maritime industries.

So what MARAD has done as I understand it is decided to lease out MARAD ships to be used in the Persian Gulf, while we have literally hundreds of U.S. commercial vessels that are available. We have our own government, then, competing with an industry that is deteriorating, instead of letting the private industry charter their vessels to help our industry, which is in such terrible condition.

I would like you to comment on that policy.

Mr. BURNLEY. Yes, sir. Senator, as we discussed a few days ago in your office, this is one of those classic dilemmas for us in trying to reconcile two very legitimate and important policy goals.

Unfortunately, with the collapse of the maritime industry in this country in recent years—and it is in a state of collapse, as I know you are acutely aware—we have become the owners, because of defaults under a loan guarantee program of many years standing at the Maritime Administration, of a great many vessels.

And it is our responsibility to try to sell those vessels off. Many of them, frankly, end up as scrap because we can only get scrap value for them. But we are obligated to try to recover what we can on these loans that we have underwritten, where we have these huge losses.

On the other hand, I could not agree more with the points you just made, that when you have an industry in a state of depression we ought not to have the United States government, if we can avoid it, taking opportunities away from what is left of the industry.

Senator BREAUX. Well, it is the chicken or the egg syndrome. You have seized some of these vessels because they do not have enough business, and if you take those vessels and put them in the private trade you are depriving the rest of the vessels of the commercial business that they need.

Mr. BURNLEY. That is right.

Senator BREAUX. My question is can we expect a refocusing on this policy?

Mr. BURNLEY. We are refocused on it, but here is a problem I have not gotten an answer to, and I welcome your thoughts on it. We simply put these ships that we now have the misfortune to own up for bid, and under Federal laws that stand today, the Kuwaitis can come bid on them, the Saudi Arabians can come bid on them, the Canadians. Anybody can come bid on them.

We will take anybody's money, in effect. We do not have the legal authority to say "No, we do not like you as a bidder."

On the other hand, I want to be sure that we have the private sector given every opportunity to put its own vessels under charter to the Kuwaitis or, if they wish, to make outright sales.

So we are trying to continue to do what we are obligated to do when we got these defaults and we ended up with these vessels, which is to liquidate them. And we simply do not have the legal authority to say to a bidder "No, you are disqualified from bidding."

As I have said to you privately, I do think that, with the one vessel that we have sold and one other we are just now putting out to bid, that as to these very large tankers that that ought to hold us for a while, and the private sector ought to be given the opportunity to provide any additional needs out there.

Senator BREAUX. One other quick point as to the U.S.-Canada trade agreement, which is working its way through the Congress. I think it has the potential for seriously eroding one of the remaining few programs that gives assistance to the U.S. merchant marine industry, and that is the Jones Act, by eliminating its requirements between Canada and the U.S. in future endeavors.

What would your position be on that?

Mr. BURNLEY. Senator Breaux, I will hold my fire slightly on that, because I have been extremely outspoken in what I believe within the inner circles of the government. And I do not want to be guilty of coming up here and trotting out views that may or may not have prevailed, because once administration policy is set then I have to supprt that policy if in good conscience I can. If it is a moral issue, I am supposed to get out if I differ.

I do believe very strongly in the Jones Act. I believe that it should not be rolled back as presently constructed. I have made those views known as and when given the opportunity to do so, both inside the executive branch and in public.

I believe that the line that has been drawn in the draft that we are working on now, the transportation annex to the free trade agreement, will accomplish the goal of preserving the Jones Act as we know it today. And I know it concerns you and other members that it does, on the other hand, mean that the Jones Act will not be extended.

Well, it has been administration policy during my entire time in the administration that the Jones Act would neither be expanded nor contracted. And I am comfortable with that. If the transportation annex as drafted is adopted in the negotiations and then if the Congress ratifies this agreement and the Canadians ratify it, I can say to you that during my time at the Department I will certainly continue to be aggressive in trying to look out for the Jones Act trade and to make sure that there is no erosion of that trade as we know it today.

Senator BREAUX. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Inouye.

Senator INOUYE. Thank you, Mr. Chairman.

I would like to continue where Senator Breaux has left off on the transportation annex and maritime matters. Did you consult with the industry or with Congressional panels before maritime matters were put on the negotiating table?

Mr. BURNLEY. Senator, there have been extensive consultations through the last several months, and I was not personally in all of those meetings. But the U.S. trade representative and his staff and our staff for the Maritime Administration have been at constant meetings.

I cannot tell you to a certainty what days they occurred along the way. I know that I had made it my role in the Economic Policy Cabinet Council, when I attended those meetings in Secretary Dole's stead, and I know when she attended those meetings, that the free trade agreement was discussed and it was discussed repeatedly, to make sure that the concerns of the U.S. maritime industry were on the table.

I can certainly say to you that those concerns were known at all times. And again, I think that the way in which the Jones Act part of the trade is addressed in the transportation annex draft that we have submitted to the Canadians, about which there has been extensive consultation with the Congress and the industry, would protect the Jones Act trade as we know it today.

It does mean that in the future, if there is any extension of the Jones Act trade, that the Canadians will be included in any such extension. What it means also as to subsidies, the Canadians have no rights to subsidies. It says that we have preserved the absolute right, if there are safety issues, to address those; that we have preserved the absolute right, if there are national security issues, to address those.

I think again it would fall to me, if I am confirmed, in the time remaining at the Department, to be as aggressive as I can in making sure, if that is the arrangement ultimately adopted, that it sticks just that way.

Senator INOUYE. Is it not true that the consultation occurred after the maritime matter was put on the table?

Mr. BURNLEY. Senator, that may well be true. Again, my role in that had been that primarily of going inside the executive branch to meetings, where I certainly at every opportunity have spoken out about the maritime issues.

But I was not personally involved, and I would be happy to supply an answer for the record if I may, and check, in the actual meetings.

Senator INOUYE. I ask these questions because in all of the matters on the bargaining table industry was consulted, whether it be agriculture or telecommunications, but in maritime consultations began after our position was made known and placed on the table.

Now, as to the matter, your assertion that this annex will in no way affect the Jones Act, will it not permit Canadians to own American flag vessels by removing restrictions on investments for Canadians?

Mr. BURNLEY. Senator Inouye, as I understand the draft that we have tabled with the Canadians of what is called the transportation annex, it would not remove those restrictions as to the existing Jones Act trade. I would be happy to double check that and reconfirm with you.

But my understanding is that it draws that line very rigidly, and we have argued that that is where the line ought to be, that the existing trade should in no way be eroded, but yes, as to future trade, if the United States government were to decide to extend the Jones Act to other kinds of trade, that it would permit the Canadians to engage in that trade, yes, sir.

Senator INOUYE. If you could provide us with a greater in-depth response to these questions, I would appreciate that, sir.

Mr. BURNLEY. All right, sir.

Senator INOUYE. I have a few other questions relating to transportation items which I would like to submit.

The CHAIRMAN. They will be included.

Senator INOUYE. Also, there is another matter that was brought up by my distinguished colleague from Louisiana on the matter of Kuwait. When one considers that we are putting up most of the money to provide safety and stability in the Persian Gulf, and I presume Kuwait is one of the beneficiaries, why is the Administration taking the position that we do not wish to tell the Kuwaitis what ships to charter?

Do you not think we have or should have some influence as to the ships that are going to be used? After all, we are putting up the money.

Mr. BURNLEY. Senator, I agree. In fact, beginning, I think it was last April, the Maritime Administration, when we first became aware at DOT that these discussions were under way about U.S. protection and U.S. flag vessels under Kuwaiti charter, the Maritime Administration did contact the Kuwaitis to try to make very apparent to them the availability of U.S. vessels for charter or perhaps for sale.

All I can say to you is that we obviously, on the other hand, had them make a decision to use some other vessels in the initial days of the trade. We have one of these vessels in the Title 11 default fleet that is about to go into service, where they have come in and they were the best bidder we had.

And there was one other such vessel that they may bid on. The request for procurement closes in the next few days as I best recall. And Senator Breaux has also pointed out that there are private vessels out there in the U.S. flag fleet for charter.

So we are going to continue to work on making sure that the Kuwaitis are aware of the availability of those vessels, and that they take very seriously the opportunity to charter those vessels.

Senator INOUYE. I ask that question because the Kuwaitis have been chartering Russian flag ships, European flag ships, and we are the ones picking up the tab.

Thank you, sir.

The CHAIRMAN. Thank you.

Senator Danforth.

Senator DANFORTH. Mr. Burnley, I have a number of questions, particularly on the transportation safety issue, which I would like to submit to you in writing for answers for the record if that is permissible.

Mr. BURNLEY. I would be happy to respond.

The CHAIRMAN. They will be included.

Senator DANFORTH. But I want to ask you a general question of philosophy, just to try to get the direction you would be heading in. It is the same question I think I asked you when you visited me in my office.

My impression has been that there are some people within the Administration who as a matter of philosophy think that safety regulation is something to be delayed or something to be avoided. We have been pushing the Administration on a number of different issues, and it has been a pretty tough chore to get action.

I have frequently criticized NHTSA when they have come before the Commerce Committee. Just to give some examples that we have had with your Department on side impact protection, in 1979 NHTSA opened an advanced notice of proposed rulemaking on side impact protection. In 1982 it terminated the rulemaking.

Congress passed legislation in 1986 and in 1987 to require a rulemaking by the DOT. Nothing has happened.

With respect to heavy truck safety rulemakings, the Motor Carrier Safety Act of 1984 required DOT to issue a number of heavy truck safety rulemakings. For example, you were supposed to develop an annual inspection program for trucks by January of 1986. It has not been done.

By October 31, 1985, you were supposed to have developed a system for rating the safety fitness of carriers. Nothing has been done.

My impression has been, particularly with NHTSA, also with the difficulties that DOT may have had with the Office of Management and Budget, that safety regulations are viewed as somehow anti-free market; they are things that ought to be slowed down, if adopted at all.

And it really has been a very, very difficult undertaking for those of us who are interested in transportation safety. Secretary Dole I think accomplished a great deal with respect to passive restraints, though not as much as I would have wanted, but more than I thought she would accomplish with the Administration.

However, as you know, there is the so-called trap door provision, which states that if states representing two-thirds of the population of our country enact seat belt laws, then the passive restraint rule would be revoked.

There has been a question as to how the DOT would interpret the various state laws. My point is, if a Secretary of Transportation has a philosophical position that safety is something that is just not the kind of thing that a true wearer of the Adam Smith tie would be for, then a lot can be done to thwart safety, a lot can be done within your Department.

A lot can be done on passive restraints and side impact protection and the like to stop progress. Now, you are going to be Secretary of Transportation for at least a year, and my question to you is, would you go to this job with the idea of being an opponent of safety regulation, an advocate of the free markets, to the exclusion of safety regulation? Or instead, would you go as an advocate of transportation safety and a person who was willing to push the regulators in order to achieve meaningful protection for the traveling public?

Mr. BURNLEY. Senator, I am glad I was careful in my choice of tie this morning.

I have been at the Department since March of 1983 and I am very proud of the record that Elizabeth Dole has, for all time now having left the Department, from her tenure as Secretary on safety issues.

We talked to some of the old hands in our Department and let me tell you that this Secretary, Elizabeth Dole, did more to elevate the importance of safety day-to-day in our thinking and what we devote our resources to than ever before in the Department's 20-year history.

I was intimately involved in the writing of the passive restraint rule. I think the way in which we did that has, by what has happened since the rule was issued in the summer of 1984, worked out extremely well. Lives have been saved, thousands of lives have been saved.

In fact, NHTSA has a new estimate out this week going back to 1983 that 7,500 lives have been saved in this country by the use of seat belts. And the dramatic increase in seat belt use, as you know, has come as a result of encouraging the states to pass seat belt laws.

And we did it not with highway funding sanctions or anything of that sort. We did it with what is called the trap door.

It is very clear that, while we have a great many seat belt laws, that on the other hand Rule 208, the passive restraint rule, is going to be fully implemented. It is being phased in now, as you know. Twenty-five percent of all the cars sold in the country this year are required to have those systems. It will be 40 percent starting September 1 of next year, 100 percent the year after.

I have got a lot invested, not just in that rulemaking but in safety generally. I believe very strongly in economic deregulation. I believe that we are ill-equipped at the Department to make day-today economic decisions for 240 million Americans.

But I believe equally strongly that we have a very important, in fact the most important, obligation to make sure that we are aggressive and that we are devoting adequate resources to our safety regulatory responsibilities.

As I said earlier in the hearing, for those of us who believe in economic deregulation on the one hand, I think we bear a particular burden on the other hand in being aggressive on the safety side.

We can certainly be faulted in particular instances for the speed with which we have done this or that project. We are also, I think, on the other hand, again with the four-year record that I just alluded to, within our rights to say that we are taking our safety responsibilities very seriously.

And if I am confirmed, I propose to continue in a very aggressive way to make sure that is the case.

Senator DANFORTH. Thank you.

The CHAIRMAN. Thank you.

Senator Kerry.

Senator KERRY. Thank you very much, Mr. Chairman.

Mr. Burnley, I appreciate your taking the time to come and visit and have an exchange with me.

Mr. BURNLEY. It was my pleasure.

Senator KERRY. Let me just follow up on Senator Danforth's question if I can. When you came up here for confirmation as counsel, you said at the time that you thought there was a definite Federal role in the effort to enforce safety standards, et cetera.

On November 9 in Lawrence, Massachusetts, a railroad worker was killed under circumstances that have raised a lot of people to question the safety standards involved in the accident. Twelve hundred railroad workers are now on strike in Massachusetts as a result of that accident, requesting that there be a full investigation.

They asked the FRA to speed up the safety study of the railroad system there that was requested in the 1988 Transportation Act, and that is set for next spring and FRA Administrator Riley said no, he would not speed it up.

Now, I guess my question to you is this. If we are concerned and if the Agency is going to play its appropriate role, why is it not important, with 1200 workers on strike and an obvious concern, to respond positively and immediately go forward with the study?

Mr. BURNLEY. Senator Kerry, I agree with you that it is important, and it is a very fair question. And I have talked to Administrator Riley about it and he tells me the following: that he met or spoke by phone—I believe he met face to face, but it may have been by phone—with the president of the United Transportation Union late last week, which represents I think virtually all of the employees at what is called the Springfield Terminal Company. I believe that is the strike you are alluding to. It is a subsidiary of Guilford Transportation Company.

Mr. Riley tells me he made clear to Mr. Hardin that he would move immediately to look into specific allegations, but that we had to have specific allegations; that the general charge that there are safety problems would not be sufficient to cause him to take off of other safety investigations that are under way right now our inspector personnel and send them straight up there; but that if we can get some specifics, particular things we can go look at, those people would be up there tomorrow.

Mr. Hardin, Mr. Riley tells me, said that he would get back to Mr. Riley in a matter of a few days with specific allegations that he wanted investigated. Mr. Riley has assured me the moment he has them in hand that he will send people off to get them, and that that will not be in lieu of the investigation that is scheduled for early next year. We will do that as well.

Senator KERRY. So if information is provided to you, you will respond?

Mr. BURNLEY. Yes, sir.

Senator KERRY. I am glad to hear that.

Now, one of the other matters that we discussed is the handicapped parking situation, not obviously of concern to everybody, but there are six and a half million Americans who require handicapped parking plates and stickers. I am informed by friends of mine in the Paralyzed Veterans of America that there are only 15 states that currently have full reciprocity with other states.

I put legislation in earlier this year, which is on the national highway traffic authorization, which is still over in the House, not for reasons accompanying that. As of yet we have not had the administration support it.

There is a study which we requested in the H.R. 2 bill, the highway bill. That study has just come back, and indeed the findings of the DOT study say that recognizing out of state handicapped plates, that parking problems facing the handicapped traveler would be greatly reduced with development of a uniform state law.

We have a uniform state law now, part of the legislation. If we were to move it independently, should that bill remain stalled, will the administration now support it?

Is it your view, having reviewed it, that this is worth proceeding on?

Mr. BURNLEY. Senator, I am in complete agreement with you about the importance of this issue. With six and a half million people affected by it, it seems to me it is a national issue.

I also understand and agree that, while every state apparently has in this day and age handicapped parking required, that what we are lacking is uniformity in reciprocity. We do have a uniform act that was drafted under the auspices of one of the state associations, I believe it was a committee of the National Governors Association. I may be wrong about that, but it was a state exercise, but with a national committee doing it.

And I would like to work very closely with you to see if, even short of legislation, it is possible. And I am willing to put myself personally behind this with you, because I know how much you care about it, but it also is in my judgment an important issue, if it is possible, to get the states to move very quickly now to achieve uniformity.

I would like to go through that with you, and if it cannot be done quickly then I am certainly open to looking at legislation. But I think that the states have made some progress on this. We do have a uniform act that has been drafted and adopted in about 15 states, as you say, and the question really is a practical one of how to move it most quickly along to fruition in all 50 states.

And I would like to work with you on the fastest way to do that.

Senator Kerry. I do not hear you supporting the legislation. I think the recommendation of the report, which is what was required, says we need a uniform legislation. It is precisely because we do not have—you say the states are moving on it independently. That is exactly the problem.

Ohio has a reciprocity agreement with one state, Tennessee with six states, Texas with eight states. And people are consistently having cars towed and paying expensive parking fines because nobody recognizes the symbol of another state.

It seems to me if you do not have a stick there, we are not going to leverage it.

My time is up. But Mr. Chairman, would you please permit me one additional comment?

I do want to work with you and I would love to see you support the legislation. I hope we are going to work on that.

Mr. Burnley. I will be back in touch with you forthwith.

Senator Kerry. Massport, as you know, has moved independently to try to deal with the peak hour traffic at the airport, and I would just very quickly, because my time is over. They have announced their plan to develop a new set of policies to deal with that involving peak pricing, et cetera.

And I would like to know whether or not or how you are going to respond to those initiatives.

Mr. Burnley. Senator Kerry, we have had some initial discussions—I know you are aware of them—with Massport and have talked to them about their concept, and we are anxiously awaiting the specific proposal. We have not gotten our hands on that yet, but I think they indicated it will be to us shortly.

Generally speaking, I think there is a great deal of merit in exploring peak hour pricing. I think that as we wrestle with the issue that Senator McCain opened up early in the hearing today of airport capacity, one dimension of that is to be sure the capacity we have is being used as efficiently as we can use it, while at all times being sure it is operating as safely as possible.

And if you have a proposal that comes down from Massport that proposes to charge somewhat more to operate in and out of an airport at 9:00 a.m. than it proposes at 2:00 a.m., you are going to find a very sympathetic audience on the part of Jim Burnley.

I think it is important to see the specifics, because I do not, on the other hand, want to see us take such a draconian step that we end up banning general aviation from major airports in this country by having discriminatory pricing that is so extreme that they simply cannot operate during normal hours.

One of the great issues we face and will continue to wrestle with and work together on is how in fact we are going to make those adjustments between those states, the general aviation industry, and the commercial aviation industry, and being sure everybody has a right to operate.

The Massport proposal as we understand it will address that issue in some fashion. So I am reserving judgment and looking at how they do it specifically. But the concept is one that I am sympathetic to.

And in fact, when Secretary Dole put out the notice of proposed rulemaking back in June that led to the consumer disclosure rule that we put out in final form September 2nd, that NPRN raised this particular idea of peak load pricing and asked for comments on it. And we did that because we wanted to start creating a body of data that we could work with.

So I am very anxious to see the Massport proposal.

Senator KERRY. Thank you.

Mr. Chairman, I would like permission to submit some questions in writing.

The CHAIRMAN. They will be included in the record.

Senator Ford.

Senator FORD. Thank you, Mr. Chairman.

Mr. Burnley, we have been struggling now for some time attempting to resolve air traffic controllers positions, maintenance staffing, et cetera. As Secretary of Transportation, tell this Senator vour philosophy as it relates to supporting staffing requirements put forward by FAA in the face of OMB pressures to constrain position and funding increases?

Mr. BURNLEY. Senator Ford, I have been enthusiastic in my support, as Secretary Dole was during the time we were at the Department together, for supporting FAA staffing requests where they made sense. But let me amplify on that.

I recall, I think it was two years ago, about this time of year as we were putting together our budget package to send to OMB, that the FAA leadership came to Secretary Dole and said they were only going to need an additional 225 or 250 people, whatever it was, in the budget we were putting together for the controller work force, and that that is all that their staffing standards showed.

She was perplexed by that and she said that she did not think that was enough people, and she asked that the senior leadership of the FAA go back and take another look. The senior leadership came back and said: Well, gosh, that is about all we can get through the FAA academy and the training system, and we really cannot absorb more people than that.

And she told them that she would be asking for 500, about twice what they had come to her on the staffing standards, and that they could figure out a way to train those people.

So I reserve the right to ask critical questions. I reserve the right to make sure that FAA staffing standards are getting us where we want to go.

But in terms of discussions with OMB and the administration more generally, the audience I am finding right now is very sympathetic, as it was a year ago, to making sure that we have adequate resources, particularly on the personnel side.

And frankly, I think the more important question is making sure that the FAA has given us a request that meets the need that can be reasonably projected.

Another frustration, frankly, that I have had in my time at the Department is with the maintenance work force issue. We added something over 800 people in terms of new hires in the last fiscal year, but that only netted us about 371 people because we had about 500 leave for various reasons. And we are suffering.

The GAO did a report recently that demonstrates that we are suffering some manpower shortages in the maintenance work force. We have been asking the FAA for the last two or three years to reinforce that work force by aggressively looking for opportunities to hire outside contract personnel, as well as the hiring that we have been doing in recent months. And they have frankly fallen short on that.

And again, I come back to the statement I was discussing with Senator Adams a little bit ago in my opening statement. The fact that that has happened may raise some other issues that I know you are very interested in, and you have had some very constructive hearings in recent weeks about the FAA as an organization and how it can be better able to do its job and what we can do to free it up.

Senator FORD. Mr. Burnley, I do not want to interrupt you, but I do not want you to take too long, and I would like to get some yes and no answers.

Mr. BURNLEY. All right, sir.

Senator FORD. What is difficult for me to understand is when the committee was pushing for 1,000 additional controllers the Department was very much opposed to it in this legislation for this fiscal year. In fact, I believe you met with some of us and with staff and very vigorously opposed the increase for the 1,000.

Then you were converted and came for 955 at a later date.

Mr. BURNLEY. Oh, no, sir.

Senator FORD. Well, that is my information. If you want to clear the record, you may do so. But it is going to be difficult for me to take any other position other than that we were being stonewalled on the 1,000, and then we came with the 950 or 955, to be exact.

Mr. BURNLEY. Senator, I want to be sure the record is clear on this, and it is hard to do it with a yes or a no. So if you can give me a moment.

I think it is important to revisit these discussions this spring. The discussions that I had then with staff of the committee focused upon the fact that when the Congress writes a number and a particular job description in—and in this case, it was just 1,000 controllers—that that can have some very unintended effects.

The reason is you may have people who are not defined as we were defining controllers last spring, whom you also need in critical positions. In fact, the General Accounting Office just did a study on the whole issue of controller definitions, and I sent a letter to the Congress last week saying that we fully endorsed and intend to subscribe to that redefinition, because I think it is terribly inefficient of your time and our time and again a diversion from more important underlying issues for us to be quibbling about definitions.

But it is important, I think, to recognize that when we sent a request to the Congress last spring, the definition that we were operating under of controllers at that time did not give you a request under the new definition. When we amended our 1988 budget request for 955 controllers, what we asked for were 580 controllers and we asked for 375 other associated personnel—supervisory personnel, traffic management coordinators.

Now, this redefinition that the GAO has recommended, that the Senate Appropriations Committee has also recommended, that we are adopting, I hope will put that issue to rest once and for all.

But certainly, I will come back to the Congress if I ever see an occasion where a definitional provision in a proposed statute is going to end up with things coming out differently than what you intend.

And what we were worried about last spring simply was that, because our first line supervisors and because these traffic management coordinators that stand in the control room and help sort out the traffic for the controllers, who are themselves highly experienced controllers, because they were not then counted as controllers, what the FAA ended up doing and what this GAO report demonstrates they did is they ended up not promoting people into those critical first line supervisory positions because we would then lose somebody that was counted as a controller.

That is not something you want to have happen, and I do not want to have it happen either. The GAO correctly pointed out a few weeks ago that that was a perverse impact or effect—I think that is the way they put it—because nobody intended it to be that way.

So I certainly hope—and I was not a party intentionally to any misunderstanding, and I apologize if there was a misunderstanding. But that was the nub of the concern.

I want the FAA management to have the flexibility to come to me and to come to you and to say, we need the following number of people and we need them in these different jobs, and to explain to you what those jobs are. It may be that we need on a given day 580 controllers or 1,000 controllers, whatever it is, and on another day we need 350 supervisory personnel.

That is the flexibility I want them to have.

Senator FORD. Mr. Chairman, I have a lot of questions which I will submit for the record, and I will ask for a timely response.

I do have two very quick ones that I would like to ask now.

The CHAIRMAN. Go ahead.

Senator FORD. There is some interest on this committee in the slot issue. When can we expect a rulemaking on slots and when will this rulemaking be completed?

Mr. BURNLEY. Senator Ford, we have done what is called granted the petition of America West Airlines to review the whole slot allocation issue. As you know, we have slot constraints at four major airports, but only four. But they are critical, and this is a very difficult issue for us.

We have had this scheduling committee system and that broke down and we had paralysis. And now we have a buy-sell system and there are a lot of concerns about that.

We have the record open, as I understand it, right now taking comments. I would hope in a matter of a very few months to be able to come back to you and say, here are the conclusions we are drawing.

The key, it seems to me, at those four airports is to make sure that we have reasonable opportunities for people who want to add service or new entrants to get into the market in those airports. I want to be sure that the rule that we put out a couple of years ago is having the effect that we all hope and expect that it will have, and if we need to make changes in it I am not the least bit adverse to making changes.

Senator FORD. We have over 20 Senators now that have co-sponsored a piece of legislation making FAA an independent agency. What is your personal opinion of this proposal?

Mr. BURNLEY. Senator, my personal opinion is that it needs and warrants, is well worth serious consideration. And it goes back to the underlying point that I made in my opening statement and discussed with Senator Adams. I do think it has been several decades now since we looked at the fundamental structure of the FAA. The Byrd Commission is working on it, but the rest of us need to go forward.

I think your hearings have been a very constructive contribution to going forward to re-addressing those issues. As you and I discussed, there are some ancillary questions that have to be sorted out. And one of those questions is, does the organization of the Federal Government that handles aviation safety come out in better shape or not with a particular change?

And it may be that an independent agency approach on balance will work to the advantage of safety. I think that is the way you judge it. You will lose your seat at the cabinet table for them, I think that is an issue that has to be fully addressed, as to what the costs are if you break them completely out of the cabinet structure.

But I have a very open mind. I did not come to you today with a bunch of preconceived solutions to those problems, but just a promise to work with you on them.

Senator FORD. I am going to say to you, Mr. Burnley, that I am going to have more hearings on it, and you are invited to attend. And I hope when you get the invitation that you will join us.

Mr. BURNLEY. Thank you.

Senator FORD. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Stevens.

Senator STEVENS. Mr. Burnley, I am delighted to see that you have been nominated by the President. You have been down at the Department long enough now that we have all worked with you.

I am pleased also to see that he has nominated to take your place as Deputy a woman we have all learned to respect and admire. So you are going to have a good team down there.

I would like to ask you some questions about the Coast Guard. I do not think anyone has touched on the Coast Guard yet. I have in front of me the comparative history of the Coast Guard budget.

It is a very interesting thing. In 1982, the Coast Guard request was $2.4 billion, and the administration requested $1.8 billion. Congress authorized and appropriated $1.9 billion.

In the Department of Defense appropriations bill, at my request, the Congress provided an extra $300 million and that raised it to $2.2 billion. We have seen now when Congress puts up the extra money for the Department of Defense the Coast Guard has enough money to get along.

In 1983 it did not, so it ended up with $2 billion.

In 1984, we put up another $300 million from defense, so we ended up with $2.4 billion.

There has been a pulsating support coming from the defense appropriations. We did not put up any money in 1985, so the operating expense account dropped down again. In 1986 we put up $490 million and it went back up to $2.4 billion. Then again in 1987, we put up $275 million and they were able to come by with $2.3 billion.

But during this period of time, the operating expense account has gone up from a level of $1.4 billion to $1.8 billion, and they have been squeezed out in terms of the traditional role of the Coast Guard along the coast lines because of the increasing problem of their drug interdiction activities.

On the one hand, they have got more equipment, they need more manpower. They have to have more support and yet, as a practical matter, the support of this budget from the Department has been not good.

I do not know if you have looked at this. Have you made any study of the problems of the Coast Guard and the fact that we have provided so much new equipment for it, so many new activities, it has new authorization, and yet its funding has not gone up accordingly?

Mr. BURNLEY. Senator Stevens, I have not done a formal in-house study, but I have spent a lot of time worrying about this issue. I share the basic sentiments you just expressed.

It is terribly important that while we are beefing up our drug interdiction capabilities that the more traditional responsibilities of the Coast Guard also be protected and that they not be allowed to erode.

I think that fisheries treaty enforcement, search and rescue and the multiplicity of responsibilities the Coast Guard has carried out in this country for 200 years are critical, and they have to be funded adequately.

I also share your view that we are in a squeeze period right now to some extent because we have a lot of new planes. We have some new vessels. We are getting some of our older cutters refurbished, and we need to be sure we have the people to man and support those pieces of hardware.

I am extremely comfortable with the idea of first going to OMB and then coming to the Congress and seeking whatever resources I am convinced the Coast Guard needs, and I think the Coast Guard Commandant would tell you in public as well as in private that my record would support that.

The difficulty we all face is a difficulty that I touched upon at the outset of the hearing. With the tremendous budget pressures we are all under, the immediate concern I have is that if we face sequestration, if the budget negotiations are not successful, the Coast Guard would be required immediately to find a fiscal year 1988 savings equal to 5,000 people.

The Coast Guard has only 38,000 people in uniform and 4,000 or 5,000 civilians. It would be a disaster for them and for the country if that happened.

Again, Chairman Hollings has offered to help make sure that we got whatever relief we needed on the aviation front. I would be right back up here on behalf of the Coast Guard as well seeking assistance in making sure we did not have a disaster of that size.

Senator STEVENS. The real problem is that the defense budget is such now that we will not be able to reach into that budget and pull out money for the Coast Guard anymore.

I am fairly well known, I think, as being a little provincial about some of these things. My state has half the coastline of the United States. We do not have a drug problem on that coastline; yet the money is flowing now down to the areas where there is a drug problem, and rightfully so. I have no problem with fighting drugs.

The difficulty is that these traditional problems, the problems of protecting the oceans against pollution, against intrusion of foreign fishermen, search and rescue, the whole question of even the maintenance of these vessels is now in serious question.

I think it is going to take some new approach to funding for some of the activities of the Coast Guard, and I hope that you would be willing to look at that. For instance, I think that any money that is derived from forfeiture of anything seized in the drug interdiction activities or all of the fines and monies that are derived from that activity ought to go back into the Coast Guard activities.

I think we ought to have a trust fund to make sure that these people who are out there enforcing these laws against drugs understand that if they are successful, it is going to go into a fund to help them have a greater ability to intercept drugs in the future.

Unless something is done for the Coast Guard in 1988, whether by sequestration or otherwise, we see about a 10 percent cut for the Coast Guard because we cannot get the money out of the Department of Defense.

As I said, we put $1.4 billion in six years from the Defense Bill into the Coast Guard. That means that if that well is dried up, the Coast Guard in the next six years has to find at least $1.4 billion beyond what has been normally provided in order to stay afloat. I see no one really thinking about it.

Mr. BURNLEY. Senator Stevens, I can assure you that the Coast Guard Commandant and I are thinking about it and want to work with you on devising solutions.

On the one hand, I could not agree with you more that the funding mechanism that has been used in recent years, drawing on the Department of Defense account, is not going to be available in the future.

On the other hand, I must say in all candor that we have been very grateful for your leadership on that, because without your leadership it would not have happened, and we would be in even worse shape than we are.

So we will continue to work both internally and with you and the other members of the committee on devices and mechanisms to assure the Coast Guard of adequate resources.

Again, I think you know that Paul Yost, the Coast Guard Commandant, is particularly sensitive to the need to be sure that the drug interdiction responsibilties, while carried out as aggressively and fully as possible, do not so overshadow the more traditional responsibilties as to leave those responsibilities unmet. They have to be met, and the Coast Guard is the organization to do it.

Senator STEVENS. The Coast Guard needs an advocate at that cabinet table, in my opinion. In times of war, the Coast Guard is part of the Department of Defense. In times of peace, it is part of your department.

In times of peace is when it needs its greatest protection because with all the build-up since 1980 for the Department of Defense, the Coast Guard has been just a poor stepchild, notwithstanding the fact that had we had any hostilities they would have immediately become part of that Department that has had all of this modernization and expansion.

I think there ought to be some recognition permanently of the role of the Coast Guard in defense, and we ought not to have to beg for part of the Department of Defense appropriations to go to the Coast Guard.

Mr. **BURNLEY**. I emphatically agree, Senator.

One thing I think is important to say, because it happens in your home state more so than almost anywhere else in the country, while on a given day in the Persian Gulf today, for example, members of our other branches of the armed forces are at risk, the men and women of the Coast Guard are putting their lives on the line routinely day-in and day-out, year-in and year-out in a time of peace.

They are at risk in doing those things that we all have come to expect them to do every day. They do not have exceptional situations like a Persian Gulf or Grenada incident. When we have a fishing vessel capsized off the Alaskan coast in a bad storm in the wintertime, we expect the Coast Guard to go out in that storm and get those people.

I cannot tell you how much I believe in them as an organization. They are, in my judgment, the most efficient government organization I have ever dealt with. There are always opportunities for more efficiencies, but they are as good as I have seen.

All I can say to you is that within the counsels of the executive branch and then coming to the Congress, I am not going to be the least bit hesitant to be an advocate on their behalf.

Senator **STEVENS**. Thank you very much.

Thank you, Mr. Chairman.

Senator **KASTEN** [presiding]. The Chair is pleased to recognize now the Senator from North Carolina, Mr. Sanford, for the purposes of making a statement on the nominee.

STATEMENT OF HON. TERRY SANFORD, U.S. SENATOR FROM NORTH CAROLINA

Senator **SANFORD**. Mr. Chairman, of course I am not a member of this committee, and I think it would be possible for Mr. Burnley to relax for a minute or two since, as one of his North Carolina Senators, I have come to the committee to urge the confirmation of Mr. Burnley as Secretary of Transportation.

He is a native of North Carolina where he practiced law prior to joining the Reagan administration. I have discussed his traits and his character and his abilities with a great many of my friends who knew him when he was practicing law and with some of my friends who are in the Department of Transportation, and I certainly appear here to endorse his nomination.

I hope the committee will vote favorably as soon as possible. Thank you very much.

Mr. **Burnley**. Thank you, sir.

Senator **Kasten**. Senator, we thank you for your statement.

There have been a number of questions which have been submitted for the record during the process of the morning hearing. Those questions will be submitted to you, and we are hoping that you can get back to us in a timely manner.

Mr. **Burnley**. We will answer them promptly, sir.

Senator **Kasten**. On behalf of the committee, we thank you very much for your testimony this morning. Personally, I wish you well in your new position. I believe you will be confirmed to the Secretary of Transportation.

We thank you very much, and you are excused.

Mr. **Burnley**. Thank you, sir.

Senator **Kasten**. Our next witness will be Mr. Ralph Nader, Center for Study of Responsive Law, Washington, D.C.

[Pause.]

If I may before our next witness speaks, Chairman Hollings is on his way, returning. We are in the process of going through a 15-minute record vote, and Senator Hollings will be returning momentarily.

As I have said, our next witness is Mr. Ralph Nader, Center for Study of Responsive Law.

Mr. Nader.

STATEMENT OF RALPH NADER

Mr. **Nader**. Thank you, Senator Kasten. It is sort of ironic, is it not? I would like to make a comment on the advice and consent process as it applies to the nomination of James Burnley before I go into details; that is, if this process is to be taken seriously for a very important post in government, it is incumbent on all parties not to try to project a fait accompli to the public.

I say this because I want the record to reflect that a number of groups would have testified today who are highly critical or opposed to Deputy Secretary Burnley's nomination had they felt there was a chance that their words would fall on receptive ears rather than fall on a fait accompli. I am referring to the Airline Pilots Association, the Flight Attendants Association, the International Association of Machinists as well as other groups.

I think the record should also show that the function of safety in the Department of Transportation is its most important responsibility. Few people who are familiar with the Department's statutory duties would object to this assessment.

Americans live or die, depending on what the Secretary of Transportation does or does not do in safety policies and enforcement regarding motor vehicles, highways, aircraft, air traffic, rail, motor bus and marine travel.

As a government official deeply enmeshed in these matters in the position of General Counsel and then Deputy Secretary of Transportation under Elizabeth Dole since 1983, James Burnley should be evaluated on his performance and his positions.

Very little happened at the Office of the Secretary in which Mr. Burnley was not a concurring or initiating party therein. He was not a conventional Deputy Secretary focusing on reorganization and administrative issues only. He had straight lines to the White House. He was very much involved in the formulation of policy and its implementation out of the Office of Secretary.

To say, as some of his supporters have said, that since Mr. Burnley is experienced at the Department and can provide continuity he should be confirmed is to omit any normative standards about the proper or improper nature of that experience and continuity.

Certainly the many criticisms of Mr. Burnley from members of both parties, on Capitol Hill, including Senators on this committee from both parties, such as Senator Danforth and Senator Ford, would seem to indicate over the recent past that normative judgments about his performance are what count.

After all, many executives in industry and government, even prison wardens, have experience and can provide continuity. That does not mean they are adequate for the job. We have to go further.

The foremost criticism that can be made against Mr. Burnley is that by ideology, political loyalty and actual performance, he does not believe in enforcing the safety laws under his aegis. He did take an oath of office to enforce these laws, meaning the issuance of safety standards, the assurance of compliance with these and previously issued regulations, the conduct of safety-related studies and research and development, and the provision of information to transportation consumers. Once in office, he subverted this oath.

Let us start with the motor vehicle safety programs under the National Highway Traffic Safety Administration, or NHTSA. First of all, look at his testimony. He does not mention NHTSA. He does not talk about motor vehicle standards programs, which is clearly the most important safety program in his department when you consider how many lives and injuries are at stake. He has one small paragraph on the single license ruling for Interstate truck drivers.

Senator John Danforth has repeatedly, including today, and strongly criticized the Department and NHTSA for delays in activity in issuing standards, even flouting Congressional requirements and deadlines.

Here is a list of some derelictions which we have compiled and which Mr. Burnley's no law-and-order philosophy has condoned or defended.

One, he opposed the standard to require shoulder harnesses in rear seats despite a 1967 requirement for the anchorage to be installed. In other words, the anchorage has been in for many years but not the shoulder harness.

When the National Transportation Safety Board, NTSB, provided evidence to DOT in August 1986 urging such a standard to reduce such backseat injuries, he held up the rule and finally allowed it to be issued as an advance notice of proposed rulemaking.

That is the slowest way to start a safety process. Usually, if you are concerned, you will put out a notice of proposed rulemaking and not go through the cycle of the advance notice.

Recently, I received a letter from a constituent of Senator Kasten, who has also been in touch with Senator Kasten. He is an elderly gentleman, a retired General Electric engineer. He was driving along in his Blazer, and his wife was in the back seat and his sister was in the right front seat. An 80-year-old driver lost control and slammed into them. His wife was fully belted in the back seat. She did not even seem to be seriously injured. She died a few hours later in the hospital from internal hemorrhaging.

Not surprisingly, he connected this to the absence of a requirement for a full three-point seat belt in the back seat which has never been issued by the Department of Transportation even after evidence to the contrary was established.

I am going to include in the record his extremely graphic description and what it does to a family when something like that occurs and the government does not protect them. This may have been a reflection of a prior administration in neglecting this standard, but that is the kind of death that is going to occur and has been occurring in rear seats all over the country because there is no such across-the-board three-point belt standard.

By the way, he also contacted Senator Proxmire and Senator Kasten, urging that they do what they can to get the Department to issue this standard.

[The letter follows:]

N4163, State Hwy. 80
Elroy, WI., 53929-9747
October 23, 1987

Mr. Ralph Nader
Public Citizen
2000 P Street N.W.
Washington D.C. 20036

Dear Mr Nader:

I am sending a $50. check in response to your appeal for money to fight for justice in the courts. I do understand that almost every thing that the Reagan administration does is against the people.

I long ago made up my mottoes for the administration:
Ronald Wilson Reagan (666) means Richer willbe richer, poorer willbe poorer, wealth before health, etc all 6 letter words.

When my wife Zillah (a life long Republican) she said "I am afraid of that man." We thought she meant in general. It turned out that she was killed in an auto accident by a reckless driver. But she probably would not have died had better safety equipment been required in the rear seat of a Blazer S10. We did not know that rear seat "lap belts" have a reputation for being dangerous. We believed in wearing "seat belts." Zillah died in the hospital from a massive internal hemmorage caused by the lap belt in the rear seat. The Reagan administration, I believe, lhas fought the imposition of stricter safety standards for cars.

I would like to know if it is possible to organize a drive to bring forcibly to the attention of Congress the inadequites of the present regulations.

I have recently received a call from a Professor of Mechanical Engineering in a New York school who said "as a Mechanical Engineer, I know that with the accelerations, the forces, the energies involved the only way to go is with air bags."

I am a retired engineer, laid off by GE exactly 1 month after my 65th birthday. I am building a half done earth bermed solar home with my chrildrens inheritance so I can not fund a big campaign. I do have a word processor (even though my editor was killed) with which I can knock off letters. I know it would take a long term campaign. Can we do any thing useful?

Incidentally I have been totally cleared of any fault in the accident. The 81 or 82 yr old woman in the other car has been cited for failure to yield the right of way.

I enclose a copy of her eulogy. She was the type of loving caring volunteer that "Ronnie Boy" was always asking for.

What can WE DO?

Louis K Davis

N4163, State Hwy. 80
Elroy, WI., 53929-9747
September 26, 1987

Dear Church Friends, Dear Friends, Dear Relatives,

I am going to put this on the computer as I do not think I have the will nor the stamina to hand write each one of you an individual letter.

I am now alone, except for Barbara, in the house being built for Zillah. Many of you who get this letter may already know that Zillah and my sister Ruth were killed in an auto accident about 4:10 (per the paper report) on highway 33 near Reedsburg, WI. last Sunday, Sept. 20, 1987.

We were going home after an afternoon of sight seeing at Wisconsin Dells and Baraboo. moving westward at about 50 miles per hour. I was suddenly horror struck to see a car coming at me from the left front. The front of the engine was even with my left front wheel. I am sure it was less than 10 feet in front of me when I became aware that it was turning left in front of me. I did not even have time to hit the brakes or jerk the wheel. The impact was between my left front and her right front.

All three of us were wearing our seat belts. I was snubbed up short just after smashing the steering wheel. My sister, Ruth, did not appear to be seriously injured but she did complain of pains in her chest under the shoulder strap and pains in her back and neck. Zillah was patently the worst injured in the back seat. She was moaning and calling for help and said her back hurt.

I fault almost every one who came to or stopped at the scene. Everyone stopped to gawk, but it took some time before any one came to inquire if an ambulance should be called. With four people in 2 smashed cars, and no one could get out of the cars, what did they think? That we were just sitting there for the fun of it? Finally a fellow came over and asked if he should call for an ambulance. I told him to hurry. Then only one ambulance came for 4 people. Then they called for a second one. Eventually they tried to open our car with crowbars. Eventually they called back to town for the "Jaws of Life." Even after the rescue van with the jaws came it took a long time for them to get set up to use them and a long time to tear open the car so that I could get out and then Zillah who, it turned out was rapidly bleeding to death from an internal injury inflicted by the seat belt because second-seat seat belts have no shoulder strap. I am not even sure that the rear seat was adequately anchored to keep it from folding forward and damaging her even more.

When we finally arrived at the hospital, the medical teams who assembled, could do nothing to stall the continual loss of blood pressure and pulse in either of them. It is quite a thing to lie on a gurney between ones sister and wife of 42 years and realize that they are not being helped in the slightest.

As I began to realize that neither my prayers nor the doctors were going to change the slide toward death, I asked an attendant to call Rev. Lipka and failing that to call Mrs. Lula Von Hayden who found the minister and a friend and they all three came. I really needed them. As the Minister said, "tonight the church has lost a saint."

As the calls began to get through and were spread by "networking" it became apparent that the family would very shortly be there to help.

Keith was airborne by the crack of dawn leaving me to wonder if he had notified his boss that he was leaving. Barbara said her David would drive her up to arrive at 7 am. Beth would make a loop through Midway or O'Hare at Chicago to pick up Keith. Word came that Zillah's college room mate and her husband were hitting the Interstate at Lancaster, Pa. on Sunday night to arrive Tuesday afternoon. Word came that Janice and Dick of Valley Forge would come later. They were organizing a Memorial Service at the Valley Forge United Methodist Church. Zillah's brother hit the road on Tuesday morning to arrive by noon Wednesday.

At 7:00PM on Wednesday, we held the greatest memorial service that I have ever attended. The correct songs were sung, the sermon was right on the line and for a eulogy, the Minister, Rev. Lipka, read the enclosed life of Zillah written by Beth. A copy was passed out with the more formal program that listed the order of service and the Scriptures and music. Two of Zillah's favorite young women singers each sang a solo and then a duet.

Zillah was cremated in accordance with her well known wishes and the family has agreed that the ashes will be scattered on her beloved garden on Thanksgiving as a tribute of Thanksgiving for her life.

I am determined to continue to work on and to finish her home here on the bluff as she wanted it finished. We always thought that we had plenty of time to finish it so we took the time to do the other things she cared about doing, which you will note in the "Life." I am not at all sure I know how to continue my life but I am sure that I will have a lot of loving support from my family, the community, the church and friends.

I do plead with one and all to remember me with calls, letters or visits, otherwise it will be too lonely to stand.

Louie

Mr. Nader. The side impact standard for motor vehicles, a major lifesaver on the highways, still has not been issued. Again, an advance notice of proposed rulemaking was issued in the latter days of the Carter Administration, yet no notice of proposed rulemaking has been issued under the Dole-Burnley tenure.

Three, Mr. Burnley has been especially unenthusiastic in advancing the deployment of air bags. His position conforms to that of General Motors.

Four, Mr. Burnley has not pushed for applying long-overdue safety standards for light trucks and mini vans, a cause espoused by Senator Danforth.

Five, Mr. Burnley has supervised a willful neglect of recalling defective vehicles for engineering correction from the Ford park-in-reverse to the Audi 5000 sudden start problem, among others.

Six, Mr. Burnley is known to be negative on much research and development in his Department, telling people he wants to cut these budgets, including the placing on the shelf of most of the Research Safety Vehicle Program, a successful program which NHTSA operated under Presidents Johnson, Nixon, Ford and Carter to provide production line horizons for its vehicle standards activity; in other words, to say to the auto companies we know through our program that you can engineer a car this way, do not tell us you cannot.

Seven, after NHTSA recommended keeping the fuel efficiency standards set in 1975 at 27.5 miles per gallon to be effective in 1985 model year, Mr. Chairman, Mr. Burnley was a key figure in acceding to GM and Ford and lowering the maximum fuel economy requirements from 27.5 to 26 miles per gallon.

He also opposed issuing proposed standards for higher fuel efficiency levels to be applied to the automobiles and light trucks of the 1990s. Making sure our country is not prepared to counter another energy crunch crisis, through the conservation policies enacted by Congress, is to make sure our country is rendered weak by such mindless deregulatory practices.

Mr. Burnley squandered precious lead time for advanced fuel performances. Small wonder General Motors praised his recent nomination.

I thought that Elizabeth Dole's approval of this decision, which was against what NHTSA recommended I might add, was probably the most intellectually insupportable decision she ever made. This was a cost effective standard. It would have brought in almost $500 million in penalties from Ford and General Motors, who were recording record profits at that time, and it would have signaled to the auto companies in the future that energy efficiency was not only good consumer policy but good national security policy.

All that was squandered, even with Chrysler on the other side providing some very, very good data as to why this standard should have been maintained at 27.5 miles per gallon.

Mr. Burnley obtained the removal of Frank Berndt, a highly-regarded career general counsel to NHTSA. He was given his statutory 14 days and told that if he wanted to be reassigned he could do a study on the airline deregulation and its recognition of consumer protection. Mr. Berndt took the alternative and left his long-held position.

Mr. Berndt was known as a fair but serious law enforcement lawyer vis-a-vis the auto industry. He had a high reputation in government legal circles. Mr. Burnley told Mr. Berndt that he did not like career people at that level. It was a bias he has had, he said and he has had a hard time overcoming this bias and did not think he would be successful in it.

He was successful in replacing career general counsel with his political appointees in the Department.

In his assignment to oversee personnel policies, Mr. Burnley became known as heavyhanded and disinterested in affirmative hiring practices. I can assure you, Mr. Chairman, the Burnley you saw today was a very suave surface Burnley, nothing like he is known in the Department.

Mr. Burnley has been described quite accurately as a lamb when he meets with his superiors and a bully when he meets with his subordinates.

In the area of civil aviation, Mr. Burnley's positions are well known to the Congress, which makes me wonder why some Senators are rushing to confirm him.

He refused to consider hiring back any of the fully-qualified air traffic controllers fired in 1981, notwithstanding higher air traffic levels and a deficit of nearly 4,000 fully-qualfied controllers from the benchmark year of 1981 as well as higher reported near midair collisions and notwithstanding two recent scheduled airline crashes.

I liked your quote, Mr. Chairman, when you said, "If Sherman, in his march through Georgia, had to stop at an airport, we would have won the war." He has done very little to deal with the FAA's legendary, unprecedented practice of delay.

There is no agency in the Federal Government that has found more ways to delay. Some of these proposed standards for crashworthiness in cars like seat structure have been pending for over 20 years. The seat's anchorage strength of your airline seat is half that of the strength of your automobile seat in terms of its ability to resist being torn out in a forward impact, taking you with it.

I might add, Mr. Chairman, I am concerned about the requirement for disclosure of on-time arrivals that is being imposed on the airlines. If this becomes a highly competitive theme, we are going to see some reckless takeoffs just to get there on time. That can be dangerous for passengers, especially as the full-page ads saying "Who is ahead" roll into the printing presses.

I would much rather see a requirement of who is better in meeting mechanical equipment list deadlines month to month; that is, the extent to which they repair their planes. That is very good competition.

Mr. Burnley was part of the team at DOT which has invested little, done little and vociferously defended a deteriorating air traffic system, deteriorating aircraft maintenance system, deteriorating Federal inspection system, a dilatory safety standards issuance process, a quite casual attitude toward airline passenger problems and an overweening obeisance to the aircraft and airline industries which are supposed to be under DOT regulation.

Mr. Burnley has, moreover, never met an airline merger he did not like. Over 20 mergers have been applied for and approved by the Department of Transportation under Secretary Dole and Under Secretary Burnley.

Mr. Burnley is a privatization fanatic. This propensity goes beyond Amtrak's disposal. He would like to privatize regulation. He pushed for the privatization of the Department's Transportation System Center at Cambridge, Massachusetts, which is the research and analysis center for DOT. He was stopped by Speaker Tip O'Neil.

He pushed to privatize Department librarians, Department guards and internal DOT mail delivery service. Only in the latter did he succeed. He privatized DOT internal mail delivery service up and down the corridors, to the sadness of the handicapped individuals who traditionally performed this function at DOT.

There is an interesting anecdote here, Mr. Chairman. About the same time as Elizabeth Dole and her husband sent word to the various subagencies that they wanted some handicapped people up to the Office of the Secretary to take a composite picture with them for National Handicapped Week, Mr. Burnley was privatizing an internal mail delivery service that was giving disabled people jobs. Not all of them were kept on that job after that happened, to say the least.

Much more should be known and can be said about Mr. Burnley's lack of fitness to be Secretary of Transportation over the remaining months of this administration's tenure. Suffice it to say that if you want a change in this Department, and I know many Senators do, if you had a different Secretary of Transportation there is still time to make some very nice changes.

Most of the breakthroughs of cabinet secretaries come in the first 15 months of their office anyway, so it really does not hold to say, well, we have to go with continuity. Continuity for a bad performance is not continuity which deserves advice and consent.

If Senators, many of whom have been sharply critical of the way this Department has been run in recent years, want more of the same to occur, Mr. Burnley is their man, however truculent he will return to be, once confirmed.

If Senator Lautenberg thinks that that apology by Mr. Burnley reflected a maturity of personality and that Mr. Burnley will no longer be rude to Senators on national TV, then he is a very charitable Senator indeed.

Not only was he rude, but in being rude to Senator Lautenberg, far more serious was that he was trying to gloss over a statistic that Senator Lautenberg wanted clarified, that even though there are 15,000 air traffic controllers, there were almost 4,000 fewer fully-qualified radar traffic controllers in 1987 compared to 1981, even though traffic was sharply up in those years.

On the other hand, if the Senators want to send a message to the White House that they will no longer tolerate the mismanagement of and animosity toward the air traffic and highway traffic safety functions of the Department by its highest officials, they will exercise their advice and consent duties and reject the Burnley nomination.

His tenure will be little more than installing even more deeply the corporate preferences inside government, preferences which

Mr. Burnley brought with him to government and will take with him when he returns to corporate law practice.

I urge you to reject his nomination. Thank you.

The CHAIRMAN [presiding]. We want to thank you, Mr. Nader, for your contribution here today.

I have some questions, and Senator Cranston has questions for Mr. Burnley and you and some of the other members. I want to have those questions submitted to you for the record.

We have our distinguished colleague, the former Chairman here, who is presenting our next individual for confirmation as Deputy Secretary of Transportation who wants to make that roll call. So unless you have anything in particular to add, we thank you, and we will now hear from Ms. Dawson.

Mr. NADER. Thank you, Mr. Chairman.

[The questions and answers follow:]

THE DEPUTY SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

The Honorable Ernest F. Hollings
Chairman, Committee on Commerce, Science
and Transportation
United States Senate
Washington, D.C. 20510-6125

Dear Mr. Chairman:

Enclosed are responses to the prehearing questions you forwarded to me on November 9. Please let me know if you need any additional information prior to the hearing.

Sincerely,

Jim

Jim Burnley

Enclosures

Question 1: If confirmed as Secretary of Transportation, what do you expect will be your most significant contributions to our national policy? In brief, what goals and objectives will you bring to this cabinet position?

Answer:

If confirmed, my primary objective will be to ensure that the American people have the safest, most efficient transportation system possible. This decade has been a period of extremely rapid change, posing new and often unforeseen challenges to each mode of transportation. As these industries adjust to reduced levels of federally-imposed economic regulation and a more competitive world economy, the Department plays a key leadership role both in facilitating the adjustment process and most importantly, in protecting the safety of the traveling public.

This is an especially turbulent time for the aviation, motor carrier and maritime industries. To ensure that we are keeping pace with the changing needs of aviation, I would work with the Congress, the Federal Aviation Administration, and aviation user groups in taking a hard look at the structure of the FAA and proposing reforms as necessary.

To ensure that the maritime industry has the necessary flexibility and support it needs to stay competitive, I would make legislative reform of the Operating Differential Subsidy program a priority. I would also continue to emphasize the importance of assuring that our trading partners provide American shipping companies with the same access and opportunities that we provide their maritime industries.

The trucking industry has also undergone major changes that require commensurate adjustments in the way the Department does business. Toward that end, implementation of the Motor Carrier Safety Acts of 1984 and 1986 needs to be expedited. In addition, I would explore further legislative and regulatory reforms to enhance both motor carrier safety and productivity.

If confirmed, I want to emphasize that my efforts over the next few months would be focused not on short term "successes" or "quick fixes", but on the long-term best interests of the traveling public. As we approach the 21st century, we can expect that transportation will continue to experience rapid, constant change and that its importance to our country's well-being can only increase. I would hope that my stewardship of the Department would leave a strong foundation on which my successors could build.

Question 2: Why do you want to be the Secretary of Transportation?

Answer:

I have been involved in the political process all of my adult life because I firmly believe that the vitality of a democracy depends on the active participation of its citizens and their willingness to make a contribution. I have been honored to serve for four years as Secretary Dole's Deputy at the Department of Transportation. During that time, I have had an opportunity to participate in all major transportation policy issues and to become closely acquainted with the Department's personnel, its organizational structure and the manner in which it functions.

This is a critical period of rapid change for this country's transportation industries. There are many complex issues still unresolved and new ones emerge continually that can be successfully addressed if knowledge and expertise are brought to bear on them. I am honored by this nomination, and I believe that I could provide the kind of experience, dedication, and continuity of leadership that would enable me to make a positive contribution during a critical time.

Airport and Airway Authorization

Question 3: Over the next ten years, the Federal Aviation Administration estimates that more than $24 billion will be needed for airport development. Pending legislation authorizes approximately $1.6 billion for the Airport Improvement Program -- well below the amount needed to meet expected funding needs, but far above the amount requested by the Administration for FY 1988. If confirmed, will you support higher AIP funding levels and work to achieve full funding of the authorized level in the next year's budget request?

Answer:

The Federal Government is but one source of funding for the Airport Improvement Program. The $24 billion estimate of future airport development needs also includes State, local, and private funding. Historically, Federal funding has accounted for approximately 35 percent of airport funding.

I have been and will continue to be an active supporter of the Airport Improvement Program. I am committed to seeking the resources necessary to continue providing the safest aviation system in the world. This means adequate funding for AIP, as well as for the $12 billion National Airspace System Plan, and for further increases in controllers, inspectors and security personnel. The authorized levels in pending legislation will allow for significant increases in Federal support of the Airport Improvement Program. Ultimately, however, the appropriations process will determine the resources dedicated to these vital needs.

Question 4: In the past, you have advocated increased funding from the Airport and Airway Trust Fund for FAA operational expenses. If Congress continues to limit the Trust Fund share of Operations in the current airport and airway reauthorization bill, will you support that position?

Answer:

The Administration has consistently held the view that the Trust Fund should be used to cover civil aviation's fair share of FAA's costs. FAA's cost allocation studies have shown that to be about 85 percent. However, Congress has not accepted that conclusion and has limited Trust Fund support of FAA's total budget to less than 75 percent -- with 100 percent Trust Funding of the capital programs, but less than half of FAA's operational expenses, at the maximum, coming from the Trust Fund.

I would hope Congress will ensure that the full amount authorized from the Trust Fund for Operations will be made available for that purpose. Operational expenses are just as important to our national aviation system, and to those who fly and pay aviation user fees, as the capital programs that Congress has agreed to support from the Trust Fund. New air traffic control equipment will do little good without adequate trained personnel to operate and maintain it. Increasing airport capacity is important to meeting the demand on the system, but we will need more controllers, safety inspectors, and security people to keep pace with increasing demand. It is fair both to aviation users and to the general taxpayer that the Trust Fund fund most of FAA's operational expenses. Of course, I will abide by and implement in good faith the provisions of the reauthorization bill ultimately enacted.

Question 5: As you know, the Airport and Airway Trust Fund has a surplus in excess of $5 billion. Some argue that the Trust Fund should be taken off budget to ensure increased spending. Do you support such a proposal? If not, what steps will you take as Secretary to ensure that FAA programs are fully funded and that the surplus is used for the development of our airports and airways?

Answer:

I do not support taking the Airport and Airway Trust Fund off budget. Taking the Trust Fund off budget and exempting its expenditures from sequestration would not protect the general fund contribution, which would fund more than half of FAA's Operations account under the House and Senate reauthorization bills and has funded 73 percent of Operations over the past six years. That account covers the salaries of air traffic controllers, aviation safety inspectors, air marshals, and other personnel, and also pays the costs of leased communications -- the ground links between radar sites and controller facilities that make air traffic control possible. Instead Congress and the Administration must make the difficult decisions within overall budget priorities to ensure that none of the funding for FAA's critical safety functions will be sequestered.

Despite this era of deficit reduction, and with the Trust Fund on-budget, the Administration and Congress have increased aviation funding significantly. I will continue to request the funds needed to keep the National Airspace System Plan on schedule, to provide the needed levels of controllers, inspectors, and other critical aviation personnel, and to provide for capacity and safety enhancement at airports. I fully support use of the Trust Fund surplus to fund these programs.

Airline Consumer Legislation

Question 6: Both the House and the Senate have passed legislation to provide increased protections for air travelers. Do you support such legislation? Will you recommend to the President that this bill be signed into law?

Answer:

Both House and Senate versions of H.R. 3051 represent a substantial effort to grapple with the undeniable airline service problems that have faced consumers over the past year. However, we have just instituted a disclosure rule, consistent with the Committee's May 13 letter to Secretary Dole. Our initial report (November 10) provided valuable data to airline consumers, that was targeted to assist them in avoiding airline delays and other service problems. The rule requires the 14 largest airlines to report departure and arrival delays, monthly, at the 27 busiest airports. All 14 carriers have elected to provide delay information for their entire domestic systems. In addition, the rule requires these carriers to report on mishandled baggage. I believe the report was well received, will permit real competition among carriers on service quality, and will form the basis for even more precise comparative data in a few weeks, when individual flight performance will be available to consumers through computer reservation systems.

In recent months, we have also entered consent agreements with the major carriers serving four hub airports where delays were a significant problem. These agreements require more realistic scheduling and improved on-time performance. An investigation of four other hubs is nearing completion. The Department fined one of the countries largest carriers last summer for a variety of service problems and got it to agree to the hiring of new personnel as well as new training programs. We also granted antitrust immunity to the major carriers last spring to permit them to agree on more than 1,000 schedule changes to reduce congestion at peak hours. The effects of these and other actions are becoming apparent as delays have declined substantially since July 1 and consumer complaints have dropped off for the first time in a year.

Our views of the bills are governed by four fundamental considerations:

- As provided explicitly in the Senate's bill, no aspect of consumer regulation can be permitted to impinge on maximum safety of flight operations;
- Each new requirement imposed on the airline industry will ultimately be paid for by the consumer and should therefore be justified as clearly beneficial;
- Provisions that reduce flight offerings with rigid rules (e.g., airport capacity controls; stretched-out hub scheduling) can endanger aviation opportunities for budget-minded travelers, established regional carriers, general aviation, and potential new entrants; and
- Available data indicate that the many actions already taken to improve service are beginning to have a substantial, beneficial impact; drastic action in some areas at this point could harm rather than further help consumers.

The Department is not well equipped to establish requirements such as minimum block times for specific flights or rigid capacity controls at most airports. Furthermore, I am concerned that artificial controls on capacity would run the risk of driving Americans of modest means, who did not have the resources to fly prior to deregulation, out of the market. We should exercise great care before imposing drastic measures, which may have unintended adverse effects, until we have an opportunity to assess the impact and effectiveness of the requirements recently imposed by DOT.

A recommendation to the President about signing final legislation would depend, of course, on the precise contents of the enrolled bill.

Question 7: Under Secretary Dole, the Department of Transportation approved some 20 major airline mergers and acquisitions. This has significantly changed the structure of the airline industry, leaving it highly concentrated -- both on a national level and at many major hubs. As Secretary, what will you do to ensure that the restructured airline industry remains competitive? Please be specific.

Answer:

I will continue to make sure that the Department reviews each merger case to ensure that any market affected by the proposed transaction will not experience a significant reduction in competition. I will also work to expand the capacity of the airways.

The Department will also continue to evaluate on an ongoing basis the performance of the airline industry, including the effect of mergers and acquisitions on air carrier behavior and performance. We are prepared to take remedial action if we conclude that air carriers are engaging in anticompetitive behavior. For example, we are engaged in a study of computer reservation systems, including competitive implications, to determine if the Department should modify the rules that govern these systems.

Question 8: Do you think that DOT went too far in approving all of the mergers that it did? What would you have done differently had you been deciding these cases?

Answer:

The Department has scrupulously followed the competitive and public interest standards embodied in section 408 of the Federal Aviation Act of 1958. Competition in the airline industry remains healthy.

In each airline merger/acquisition case that has come before the Department, we have evaluated each affected city-pair market. While industry concentration has increased, increased concentration does not necessarily imply less competition. For example, two airlines, Continental and United, dominate Denver, but compete fiercely for passengers.

In making our determination, we place a great deal of emphasis on evaluating whether or not there are entry barriers in a particular market -- that is, restrictions on slots, gates, terminal facilities, or any other restrictions that could prevent an established carrier from expanding service or a potential entrant from initiating service. Freedom of entry and exit in city-pair markets is the key to ensuring a competitive airline industry.

I should point out that of the 20 mergers/acquisitions involving large jet operators that have come before the Department for approval, very few have raised significant concerns with respect to competition. The DOJ only recommended that we disapprove three -- Northwest-Republic, TWA-Ozark, and the United-Pan American Pacific Division Transfer. Some cases involved failing or failed carriers, for example, Texas Air's purchase of People Express. Finally, I note that the overwhelming majority of Members of Congress who have commented on proposed mergers supported the merger in question.

Question 9: During recent hearings before the Commerce Committee, several witnesses testified that entry into the airline industry has virtually been eliminated. If this is true, how can competition be preserved? If this situation continues, what will you do as Secretary to provide incentives for entry by new carriers?

Answer:

Competition in the airline industry remains vigorous. Nine years ago an estimated 39 certificated carriers were operating. Our most recent estimate is that about 131 are now providing service. Also, roughly 90% of all passengers are traveling on discount fares.

To date, we have not experienced any significant decline in competition in any major sector of the industry. Competition in the airline industry does not depend solely on the number of airlines serving a market. For example, ease of entry by a potential competitor -- either by a new airline or an established carrier that is not serving a specific market -- remains a powerful incentive for incumbent carriers to offer consumers competitive fares and services.

DOT has no plan to assist any business entity directly that wishes to enter the airline industry. Private sector financing remains the best method for raising the capital necessary to enter the airline industry. Moreover, the large established carriers continue to compete vigorously with each other and to enter and exit city-pair markets as economic conditions dictate. We have every reason to believe that with the current number and mix of carriers operating today that competition will remain intense.

Finally, improvements in airport capacity and air traffic flow are important elements in making the industry more competitive over the long term. The airport and airways systems must keep pace with growth in the industry.

Question 10: There has been a great deal of criticism of DOT's "Buy/Sell" rule, which allowed the airlines to take ownership of the operating rights at the four high density airports and enabled them to buy and sell those slots among themselves. Do you believe this rule has worked? How can it be improved? Would you support extending this rule to other airports?

ANSWER:

The buy/sell rule was a major improvement over the carrier committee system it replaced. The latter process had broken down, resulting in paralysis and virtually no opportunities for new entrants. The major objective of the buy/sell policy is to provide a means by which slot holdings can be adjusted in response to market signals without extensive government involvement. The rule is working well with respect to this objective. There has been a great deal of activity under the rule, predominantly involving time-limited sales or leases. This activity indicates that slot holdings are moving in response to changes in markets. The prominence of short-term sales and leases indicates that, not only are long-term, major market changes being accommodated, but that the rule is allowing adjustments even to short-term market changes, thus further increasing the efficiency of the system.

With respect to improving the buy/sell regulation, we are reexamining the rule in the context of a petition for reallocation of slots at LaGuardia and National Airports filed by America West Airlines. It is a complex matter, and we are still involved in that analysis. If we can find ways to make the rule more effective in enhancing competition without creating chaotic, unpredictable conditions for the carriers, we will pursue them.

The buy/sell can only apply at airports where there are slots to buy and sell -- i.e., where the number of operations allowed are limited. We have limited operations at four airports through the high density rule. We are not now contemplating extending the high density rule to any additional airports; therefore, we would not propose its extension to additional airports.

Question 11: A number of legislative proposals have been developed to address the future structure of the FAA and the air traffic control system. Do you believe the FAA should be made an independent agency? Would you support establishing a public corporation to administer the air traffic control system? Please provide justifications for your position.

Answer:

I congratulate the Subcommittee on Aviation for the recent hearings which were held to review this important question. These hearings and the various pieces of legislation that have been introduced ask whether the FAA could perform more efficiently under a different organizational structure. Each proposal advanced raises unique questions not only about the effectiveness and reliability of a new system, but also about FAA's proper role in aviation.

If confirmed, I intend to work with Congress, the FAA and the aviation community to review all proposals to enhance the FAA's effectiveness. The work of the Byrd Commission will be an important contribution to these discussions, but I do not believe we can wait for its report before beginning such a review. I am not wedded to a particular "solution", and I believe both the independent agency and public corporation ideas should be carefully considered. However, any such proposal must be critically scrutinized to be sure we fully appreciate its possible consequences, both good and bad.

Air Traffic Controllers

Question 12: Six years after the firing of some 11,000 air traffic controllers, there continue to be concerns about insufficient numbers of controllers and, more importantly, the lack of experience of the existing workforce. If confirmed as Secretary, would you support the re-hiring of certain air traffic controllers fired in 1981 as a means of supplementing staffing problems at certain en route centers and towers?

Answer:

As Deputy Secretary, I have had the opportunity to learn a great deal about the issues involved in rebuilding the air traffic system after the illegal 1981 strike. These issues are extremely complex; and I believe the FAA has done a good job of meeting the challenge of rebuilding. Training techniques are being intensified and improved, the airspace has been significantly reconfigured, new equipment has been added and new sector suites are in the offing, and many controllers who remained on duty during the strike have now brought their skills and experience into FAA management ranks. As the need for adjustment in the number of controllers and support staff is identified, we have done what was necessary to make those adjustments, and we will continue to do so.

With regard to rehiring terminated controllers, I remain opposed. The General Accounting Office survey a year ago found that the majority of working controllers are opposed to rehiring the strikers. Air traffic control requires close teamwork, and I am opposed to any introduction of discord into that environment. Moreover, I expect that a number of current controllers would retire if rehiring occurred, compounding efforts to train new employees and reducing current productivity in the system.

I would also note that some people believe rehiring the terminated controllers would result in short-term gains for the system. That is not the case. There have been many changes in the ATC system and these former controllers have been gone for more than six years. It would take a significant investment in time, training, and other resources to seek to recertify them to control traffic.

Essential Air Service

Question 13: The House and Senate have each passed amendments to their respective airport and airway authorization bills extending the Essential Air Service program for 10 years. Do you support this program extension? Will you, if confirmed as Secretary, work to ensure full funding of the program in the FY 1989 budget request?

Answer:

The Administration has taken the position, since it assumed responsibility for administering the Essential Air Service program, that the program has worked well in allowing a transition period for small communities to adjust to airline deregulation but that the program should now be terminated. This view is based in part on the need to cut federal spending but also on the limited benefits of the program. Few of the communities that are still receiving subsidized air service are truly isolated and, because not many people use the subsidized service, the cost is very high, often over $100 per passenger.

I hasten to add, however, that in spite of these views the Department has effectively administered the program since 1985 and would continue to do so if the program is extended.

Drug Testing

Question 14: Former Secretary Dole advocated the imposition of mandatory testing of safety-sensitive transportation employees as a necessary step for eliminating drug and alcohol abuse. Do you agree that such testing is needed? Do you support legislation to require such testing, as was recently passed by the Senate?

Answer:

If confirmed, I would pursue the initiatives laid out by Secretary Dole for drug testing, including random drug testing, of transportation employees in safety-sensitive positions. The public is entitled to rely on a transportation system that is drug-free. There is no room for drugs in the transportation workplace, whether that workplace is the Department or one of the regulated industries. This would be one of my major priorities.

Drug testing is one of many steps necessary to combat illegal drug use. We know from the experience of the military services and private industry, including the railroad industry, that drug testing is an effective weapon in the war against drugs. The Coast Guard's experience provides evidence of the effectiveness of random testing as a deterrent to illegal drug use (drugs were detected in 133 cases per 1,000 tests in 1983 when Coast Guard began its random testing program vs. 29 per 1,000 tests in 1986). With our transportation safety responsibilities, we need to assure that we use the most effective method to deter illegal drug usage. Random testing when combined with other forms of testing, such as the post accident testing the Federal Railroad Administration has required for the past twenty-one months, and in conjunction with aggressive drug education and awareness programs, will help us to eliminate illegal drug use in transportation.

As you know, the Department's own drug testing program is in place and working. It has been upheld in the U.S. District Court, and it was permitted by Congress to proceed as an element of federal employee drug testing provisions set forth in the FY 1987 Supplemental Appropriations Act. We conform to stringent HHS guidelines for the protection of those employees of the Department who are subject to testing, in particular random testing. The opportunity for rehabilitation is emphasized.

In the industries regulated by DOT, we are proceeding rapidly to prepare proposals for the imposition of drug testing programs, including random testing.

These features are found in your Committee's bill S. 1041, now a part of pending airline consumer protection legislation (H.R. 3051 as passed by the Senate). It would mandate alcohol and drug testing, including random testing, in the rail, motor carrier, and aviation (including FAA employees) industries. I strongly endorse this legislation, because it would buttress the internal and external programs on which we have embarked.

STAGGERS ACT

Question 15: Legislation to amend the Staggers Rail Act of 1980 is one of the most controversial issues in the area of surface transportation. Please comment generally on your views regarding the Staggers Act and on the factors you believe have led some to criticize the ICC's implementation of the Act. Do you have any recommendations in this area?

Answer:

The Staggers Act has been successful for both railroads and shippers. It strikes a balance between allowing the marketplace to function freely and retaining safeguards for shippers where competition may not be sufficient to protect them from abuse. Relying on the marketplace to set rates and marketing policies has forced railroads and shippers to work with one another to resolve their problems, instead of automatically referring disputes to the ICC. The result has been better service and lower rates for the vast majority of shippers, across every commodity and class of traffic, and improved rates of return for the rail industry.

Rail rates, which rose faster than the rate of inflation on an annual basis during the 5 years before Staggers, have dropped 7.5 percent in real terms since the Act became law. Coal rates have dropped 6.5 percent. When contract rates as well as published tariffs are taken into account, coal rates have dropped more than 12 percent in real terms and grain rates close to 50 percent.

The rail industry is financially stable for the first time in three decades. The rate of return on investment, while modest, hovers around 4 or 5 percent, and the carriers have spent approximately $80 billion in investment and maintenance of track and equipment since 1980.

Despite these undeniable successes, there have been some problems in the implementation of the Act. While some of these were largely procedural, there have been cases involving alleged substantial overcharges to captive shippers. Although the Commission has ordered substantial repayment to captive shippers in some recent cases, I believe that problems of truly captive shippers remain a concern and require continued scrutiny by the Congress and the Department.

Two procedural areas of particular concern have been cases involving maximum rates and competitive access. At the time the Act was passed, the ICC had not yet settled on a maximum rate methodology that allowed the railroads an adequate rate of return but ensured that "captive" shippers were not subsidizing other traffic. The delays in processing pre-Staggers rate cases without a firm standard were significantly aggravated when shippers took full advantage of the Staggers Act's "savings" provision, which allowed one last time to protest an existing rate before it became the basis for automatic inflation-based increases. Shippers filed some 800 cases, the handling of which severely strained the Commission's administrative resources. Most of the complaints were settled by the parties or withdrawn by the complainant, but the docket has still not been cleared.

The other major procedural issue concerned the Commission's handling of the railroads' attempts to cut costs and rationalize their rate structures by canceling joint rates and concentrating traffic on the most efficient routes. The ICC's initial reluctance to examine the cancellations, or to require the railroads to justify their actions, was severely criticized by shippers and connecting carriers. Guidelines, negotiated by the AAR and the NITL, are now in place establishing standards for such rate and route changes and specifying the type of evidence that must be presented. The ICC has taken steps to reform its internal procedures to ensure that cases are handled expeditiously, and that actions needing approval meet the appropriate statutory standards.

While some further administrative reforms may be in order, major legislative changes to the Act may put at risk the still fragile financial health of many of our major railroads.

Motor Carrier Safety

Question 16: There have been a number of legislative initiatives in the area of motor carrier safety in recent years. Please comment on the most significant ways in which you believe these efforts can be continued. Do you have any recommendations as to means to further improve truck and bus safety?

Answer:

There have been three major legislative initiatives affecting motor carrier safety in the 1980s -- the Surface Transportation Assistance Act of 1982, the Motor Carrier Safety Act of 1984, and the Commercial Motor Vehicle Safety Act of 1986.

These initiatives have improved the balance between federal and state responsibilities for motor carrier safety. Under the Motor Carrier Safety Assistance Program, created by the 1982 Act, states are now conducting most roadside commercial vehicle inspections and enforcing vehicle and driver safety requirements. Using the current MCSAP funding, states will conduct about 1.2 million vehicle and driver inspections a year along our nation's highways.

As the states have assumed primary responsibility for the roadside inspections, the Office of Motor Carriers field staff has turned its focus on conducting safety reviews of truck and bus companies and initiating enforcement actions. This effort has been enhanced by Congressional approval to hire 150 new safety specialists, thereby doubling the field staff and providing for more effective and comprehensive oversight of the motor carrier industry.

The Office of Motor Carriers and the states are working together to develop and implement the Commercial Driver's License (CDL) Program established by the 1986 Act. The CDL Program will help ensure that drivers who operate trucks and buses on the road are qualified to do so safely.

I believe that the following actions will further help improve truck and bus safety:

- national emphasis on a drug-free and alcohol-free driving environment, including establishing a blood alcohol concentration at which commercial drivers are considered to be "under the influence";
- more roadside inspections and safety reviews;
- increased enforcement of traffic laws;
- continued implementation of the CDL Program;
- better accident and travel information; and
- continued research and development activities on improved driver training programs and vehicle technology, such as antilock brakes and on-board monitoring devices.

MARITIME

Question 17: Do you believe that there is a clear and growing danger to the national security due to the deteriorating condition of America's maritime industries?

Answer:

America's maritime industries have always played a vital role in projecting and sustaining American military forces in times of war. However, over the years there has been a decline in the size of the merchant marine and the shipbuilding base.

The findings of the Commission on Merchant Marine and Defense, published September 30, 1987, confirm this appraisal of our readiness. The Commission found that "the current inventory of ships suitable for strategic sealift is inadequate to meet the requirements of even a single theater conflict." It found further that the seafarer shortage will worsen through the end of this century and that "it will be impossible for the United States to meet the requirements of the national strategy in the year 2000 from its own resources." While the Commission does not speak for the Administration, I have no basis to challenge the basic thrust of these findings.

The challenge before th ense and Transportation
is to recognize the nec the competing interests
and allotting future re he national security
decisions made by

Question 18: Do you believe that a major governmental effort is urgently required to revise our national objectives, policies, and commitments in order to reverse the decline of the maritime industries?

Answer:

I believe the objectives for the U.S. maritime industries are clearly stated in Section 101 of the Merchant Marine Act of 1936. The issue before us is to develop the programs that are needed to reach these objectives in a manner consistent with other national priorities.

In this regard, we submitted to Congress on October 21, 1987, a major proposal to reform the Operating Differential Subsidy system. I hope to work with the Congress to achieve ODS reform before the 100th Congress adjourns. Continuing our vigorous efforts to reduce barriers imposed by some of our trading partners on our carriers attempting to compete effectively is also necessary. Additionally, good faith enforcement of our cargo preference laws is essential.

Question 19: Do you believe the United States flag merchant marine is an essential direct military asset because it is necessary to meet the sealift requirements of the national strategy in time of war or national emergency?

Answer:

I believe that the U.S. merchant fleet is essential for direct support of the U.S. military forces in wartime. This opinion is clearly shared by the Department of Defense which is the agency responsible for determining U.S. military requirements. DOD recognizes that one component of our military requirements is sealift. Despite the availability of some sealift from U.S. Government owned fleets and from allied nations, DOD analyses indicate a clear need for sealift from the commercial U.S.-flag merchant fleet. In addition to the direct military support role, merchant ships are required to provide shipping to support the U.S. and allied economies in wartime. Recent DOD studies have concluded that our merchant marine is not fully adequate to meet these requirements. Together, we need to address these inadequacies.

Question 20: Do you believe the shipbuilding and repair industry and its associated shipyard suppliers are and will continue to be an essential national mobilization resource? If so, in your opinion is some form of government subsidy necessary for the construction of commercial, privately owned vessels?

Answer:

The U.S. shipbuilding and ship repair industries are, and will continue to be, an essential national mobilization resource. The Department of Defense, with the cooperation of the Maritime Administration, has participated in studies that have attempted to define the requirement for shipbuilding and repair capacity during mobilization. Although the recent studies have not been completed, the draft results indicate that the U.S. shipbuilding capacity that existed in the early 1980's would be adequate for mobilization. Since then, however, several ship construction and/or repair firms have ceased to operate.

As the buildup of the 600 ship Navy comes to a conclusion, and there is a much lower level of new construction, erosion of the shipyard mobilization base will require careful review by the Executive Branch and the Congress. At this time, I am not in a position to categorically state what form of remedies may be appropriate. However, the construction differential subsidy program encouraged inefficient practices and discouraged the modernization of U.S. yards. Simply resurrecting it is highly unlikely to revitalize our shipbuilding industry.

Question 21: Do you believe continuation of and strict adherence to existing statutory programs to reserve cargo for United States flag carriers, including the Military Cargo Preference Act of 1904, the Cargo Preference Act of 1954, and the Jones Act, are essential?

Answer:

Yes. The economic viability of the privately owned U.S.-flag vessels engaged in foreign trade is partially dependent on their access to the U.S. Government-sponsored cargoes reserved for them under the various cargo preference laws. In 1985 U.S.-flag vessels carried a total of 27.3 million tons of cargoes in our foreign trade, which excludes Department of Defense Troop Support Cargo. Of this volume, 10 million tons was civilian preference cargo. In addition, they transported approximately 12 million tons of Department of Defense (DOD) cargo.

The Jones Act provides the sole support for a domestic industry that could readily be destroyed by foreign vessels. Again, I believe that continuation of and strict adherence to the existing statutory program of the Jones Act for the purpose of preserving the Nation's domestic fleet are essential.

Question 22: Do you agree that government construction alone, mostly Navy and concentrated in a small number of shipyards, is insufficient to maintain a diversified shipbuilding and repair industry, including shipyard suppliers, sufficient to meet mobilization requirements in time of war or national emergency?

Answer:

Even though the Administration had planned a $64 billion ship construction program, this program alone may not be sufficient to maintain a diversified shipbuilding and repair industry. While the Navy's shipbuilding, conversion and repair programs will continue to represent the major base of projected employment for U.S. shipyards, there were only 14 private yards with major Navy ships under construction or on order at the close of 1986. As the Navy construction program slows down substantially when the 600 ship Navy is reached, U.S. shipyard activity will likely decline further.

Currently, there are no commercial ships under construction in U.S. shipyards. Clearly, additional shipbuilding and repair work are needed for U.S. shipyards if the United States is to maintain a shipbuilding and repair industry capable of meeting mobilization requirements.

Question 23: Do you agree that some form of Operational Differential Subsidy (ODS) is essential in order for American operators to compete realistically with their foreign competitors?

Answer:

Yes. U.S.-flag operators are required to use U.S. citizen crews because of the need to have a trained cadre of merchant mariners capable of operating the merchant fleet in wartime. The differential between U.S. and foreign wages is large, and wages are a very large component of vessel operating costs. Whereas most other costs associated with ship operation tend to be similar regardless of flag, the requirement that U.S.-flag operators man their ships with U.S. citizens places these operators at a distinct disadvantage relative to their foreign competitors. Moreover, even though U.S. operators are moving toward lower crew ships, competitors abroad are doing so as well. I believe the ODS program must be maintained and reformed, as proposed in legislation we submitted to Congress last month.

Question 24: The U.S.-flag merchant marine is our fourth arm of defense, and our laws promoting it are, to a large extent, intended to strengthen that fleet to ensure that it is available in time of war or national emergency. Our cabotage laws, of course, are among those statutes.

The proposed Free Trade Agreement with Canada is the result of many months of negotiations by the two countries. The agreement proposed substantial Jones Act concessions to Canada.

(a) Did our FTA negotiators take into account our merchant marine's role as a fourth arm of defense when it agreed to these Jones Act concessions, or were they only concerned with the international trade aspects. Please explain.

(b) Under the proposed FTA, would the Canadian-flag merchant fleet be available to the U.S. government in time of war or national emergency; and if not, should it be in the view of the Jones Act concessions the U.S. made?

Answer:

Over the last six months, the Department of Transportation and the U.S. Trade Representative's Office have been negotiating a "Transportation Annex" to the Free Trade Area (FTA) Agreement with Canada. Throughout this process we have consulted with the industry and with Congressional committees. We have been very mindful of the important role which the U.S. merchant marine plays in our national defense planning.

As a result, the Transportation Annex we have drafted does not propose substantial Jones Act concessions to Canada. On the contrary, the Annex is drawn very narrowly in terms of the basic FTA "national treatment" obligation of non-discrimination between Canadian and U.S. carriers. Specifically, the Annex would:

(1) Grandfather all existing Jones Act "measures" (e.g., laws, regulations, administrative rulings and practices), as well as amendments to these measures that either lessen the current level of discrimination or leave it unchanged;

(2) Apply the national treatment obligation to future amendments to those measures that increase the level of discrimination (for example, extensions of the Jones Act to new trades or geographical areas, but not to the Jones Act itself).

(3) Allow Canadian carriers to operate in the trades covered by those extensions only if they use Canadian-built, Canadian-owned, and Canadian-crewed vessels, thus preventing the Canadians from benefiting from cheaper foreign-built vessels and crews, and from foreign investment.

(4) Exclude entirely from the FTA preference laws and subsidies.

(5) Exclude entirely from the FTA any discriminatory measure which the U.S. needs to ensure its "essential security (e.g., national security) interests"

(6) Exclude entirely from the FTA any discriminatory measure needed to ensure safety and to prevent hijacking and acts of sabotage; and

(7) Exclude entirely from the FTA U.S. trades with third countries.

In effect, the Transportation Annex as it is now drafted - a draft to which the U.S. is committed -- reduces the application of the FTA to maritime transportation to allowing Canadian carriers to compete with U.S. carriers on equal terms for any extension of the Jones Act -- but not in the current Jones Act trade itself. In addition, it allows the U.S. to take whatever measures it considers necessary to ensure that our mobilization and defense interests are protected.

Regarding the availability of Canadian-flag vessels to the U.S. in time of war or national emergency, I understand that certain DOD mobilization scenarios already contemplate the use of Canadian-flag vessels, so I assume that the small number of Canadian flag vessels that might conceivably decide to compete in future Jones Act extensions would also be available under the same program.

I should note that the Department of Defense did not oppose the inclusion of maritime services in the FTA, so long as there was a properly drafted essential security exclusion. I would note further that under the Emergency Foreign Vessels Acquisition Act, in the event of a national emergency, the Secretary of Transportation may requisition any merchant marine vessel not owned by citizens of the United States which is lying idle in waters within the jurisdiction of the United States and which the President finds to be necessary to the national defense.

In summary, national security is very much in our minds as we conclude the negotiating process.

[Whereupon, at 12:25 p.m., the hearing adjourned.]

[The following information was subsequently received for the record:]

POSTHEARING QUESTIONS OF THE CHAIRMAN AND THE ANSWERS

GENERAL AVIATION

Question: Earlier this year, one of the general aviation groups - the Aircraft Owners and Pilots Association - strongly urged that Mrs. Dole resign from her position as Secretary of Transportation. Now, after several meetings, AOPA is supporting your nomination. What did you discuss with AOPA officials during these meetings? Why do you think they are supporting your nomination, while so strongly opposing your predecessor?

Answer: On October 8, 1987, I requested a meeting with John Baker, President of the Airline Owners and Pilots Association, to inform him of the President's intent to nominate me for the post of Secretary of Transportation. At that meeting, I stressed to Mr. Baker the need for open communication between us on issues of mutual concern affecting the aviation industry generally and, more specifically, general aviation.

On November 2, 1987, I once again met with Mr. Baker and Mr. Dan Todd, Senior Vice President for Government and Technical Affairs of AOPA, at their request. On a very broad basis, we discussed the importance of general aviation and its legitimate role in the U.S. aviation system. We agreed upon the need for continued dialogue on issues impacting general aviation.

Mr. Baker has provided me with a copy of his letter to you dated November 16. I believe that his support for my nomination is premised upon the points he raises in that letter.

MODE C TRANSPONDERS

Question: Last month, Senators Danforth, Wilson and I offered an amendment to the airport authorization bill requiring all general aviation aircraft operating in FAA terminal radar airspace to be equipped with Mode C transponders. What is your position on the need for increased use of Mode C transponders by general aviation aircraft?

Answer: The Department has taken a series of actions to strengthen safety in terminal areas. In 1985, the FAA required all planes equipped with transponders to have them turned on. Early this year, the altitude-reporting transponder requirement was extended to additional Terminal Control Areas and in June of this year, the Department issued a proposed rule requiring Mode C transponders to be used on any flight within 30 miles of each TCA primary airport.

Effective December 1, 1987, each aircraft entering into all 23 existing Terminal Control Areas must be equipped with an operating Mode C transponder. Additionally, the FAA is preparing rulemakings to create nine new TCA's within which the Mode C transponders will be required.

QUESTION: In response to pre-hearing questions on DOT's rule allowing the buying and selling of airport slots, you stated that "the rule is working well." If it has worked, why are there so many who claim that it is now a constraint on new air service? Doesn't the Buy-Sell rule also favor those airlines with "deep pockets," which also hurts those smaller communities who want service to these airports?

ANSWER: When I indicated the rule is working well, I was referring specifically to the following:

1. It has promoted maximum use of capacity at the four slot-controlled airports and eliminated the previous practice of "pocket slots" by which carriers held slots that they did not utilize.

2. Through DOT's initial slot reallocation lottery and subsequent lotteries of unused slots, 133 slots have been made available to new entrants and small incumbents at the airports (a small incumbent is a carrier which holds fewer than 8 slots at one of the airports).

3. There has been a fairly high level of activity in leasing of slots and, to a lesser extent, slot sales, which provide flexibility that is necessary in the very dynamic airline business for carriers to make changes in schedules and markets served, depending on where the demand is.

Although we see these developments as beneficial, we are sensitive to the complaints that new entrants are having difficulty acquiring slots in order to enter the slot-controlled airports and compete with incumbents. We have taken comments on America West's petition for rulemaking on this subject and we are reviewing those comments and carefully assessing the record of slot activity in this respect.

QUESTION: Have we let the airline mergers go too far? With 8 carriers carrying 93 percent of all traffic, how can you argue that "competition in the airline industry remains healthy?" Is it healthy in Charlotte, Minneapolis, St. Louis, or Pittsburgh -- where a single carrier controls over 80 percent of traffic at those cities?

ANSWER: There are many ways to measure competition in the airline industry. At the city-pair level -- which is the real market in the airline industry -- competition is greater than ever. For example, today there are approximately the same number of markets with service as there were in 1978 -- about 5,300. In 1978, however, almost 4,100 were served by only one carrier. Today there are about 3,500 monopoly markets. Put another way, there is competition in approximately 600 more markets today than in 1978. Also, we now have vigorous competition from connecting flights at newly developed hub airports.

With regard to specific airports such as Charlotte, Minneapolis, St. Louis and Pittsburgh, while one carrier has a large share at each, numerous other carriers also compete at these airports. Charlotte is served by 9 carriers, Minneapolis by 19, St. Louis by 13, and Pittsburgh by 13. In reviewing merger cases involving these hubs, the Department found no significant barriers to entry at these airports, and concluded that the dominant carriers would be disciplined by other carriers.

MOTOR CARRIER ADMINISTRATION

Question: Motor carriers play a critical role in our daily lives. The industry is our most pervasive transportation mode. However, unlike the rail, aviation and shipping industries where safety, economic and public concerns are represented in separate modal administrations (through the Federal Railroad Administration, the Federal Aviation Administration and the Maritime Administration, respectively), issues relating to motor carriers are handled at an Associate Administrator's level within the Federal Highway Administration. This Associate Administrator is only one of 34 Associate Administrators within DOT, 6 of whom are within the Federal Highway Administration alone. Do you feel that enactment of legislation such as that which I have proposed to create a Motor Carrier Administration within DOT is necessary to ensure that issues relating to the trucking and bus industries are given the level of attention to which they are entitled, a level equal to that of other transportation modes?

Answer: I agree that the concerns of the motor carrier industry should receive a high level of attention at the Department. That is why we created the position of Associate Administrator for Motor Carriers within the Federal Highway Administration (FHWA) and dedicated the considerable resources of the FHWA to those concerns. While I understand your concern to ensure the highest level of attention to commercial vehicle safety, I believe that creation of a separate Motor Carrier Administration could result in redundant administrative and budget operations. As you know, we are currently implementing our major responsibilities under the 1984 and 1986 motor carrier safety acts. My concern is that transition to a new Administration could divert resources, distract the attention of senior managers and staff who now manage the motor carrier transportation program, and delay some initiatives as long as two years.

I assure you of my continued willingness to work with the Committee and representatives from the motor carrier industry to respond in an effective and timely way to the safety and economic issues that confront us.

AUTO SAFETY

Question: Many of the safety standards which currently apply to passenger vehicles do not now apply to multipurpose passenger vehicles (such as mini-vans, light trucks, and four-wheel-drive vehicles). Since many of these vehicles are being increasingly used to transport passengers, do you support extending passenger motor vehicle standards to these multipurpose passenger vehicles?

Answer: The overwhelming majority of passenger car safety standards already apply to multipurpose passenger vehicles and other "light trucks." As noted in our recent report to the Appropriations Committees, we have already taken action to extend the coverage of certain passenger-car standards. And we are also reviewing the remaining standards, on a case-by-case basis, to determine whether their coverage should be broadened as well.

Question: How would you assess the adequacy of the efforts of the National Highway Traffic Safety Administration regarding automobile crashworthiness?

Answer: I believe that NHTSA is doing a good job on automobile crashworthiness -- both in terms of developing ways to improve the vehicle's ability to withstand a crash and giving consumers information on the relative crash performance of various makes and models. For example, NHTSA has continued to conduct and improve upon the New Car Assessment Program which subjects vehicles to crash testing and publishes the results for consumer use. In recent years, NHTSA has increased the number of cars in the program, the speed with which information is provided to the public, and developed new ways to get the information to the public in easily understandable form. This has been done, I might add, in the face of severe opposition from the automobile manufacturers.

Question: In 1982, when the National Highway Traffic Safety Administration rolled back the 5 mile per hour bumper standard, it promised to develop a bumper rating system for consumers. The full Senate has recently passed a provision requiring manufacturers to disclose the impact speed at which each bumper meets applicable damage criteria and print the rating on the window sticker of each new car. Do you favor this provision?

Answer: As noted in the Department's views letter on S. 853, we do not favor the bumper impact-speed disclosure provision. In our view, it is not likely to provide additional useful information for consumers, since automakers already must certify that their bumpers meet the minimum Federal standard (2.5 mph), and since many manufacturers which voluntarily exceed that minimum are already advertising the fact to consumers.

Question: Recently, the Department of Transportation issued statistics showing a seven percent increase in 1986 alcohol-related deaths, up to 23,990. Do you belive that the federal government has a legitimate role in combating drunk and drigged driving? If so, what is that role?

Answer: Yes, I believe that the Federal government does have a legitimate role in the fight against drunk and drugged driving and that role is one of leadership. Drunk and drugged driving is a national problem, but it can best be addressed state and local levels. I feel strongly that Federal leadership in keeping public attention focused on this issue is critical. In addition, the Department, through NHTSA, is assisting states to identify new and better ways to fight drunk and drugged driving with new enforcement techniques, research on the effectiveness of various state drunk and drugged driving laws, and the identification and publicizing of model state and local programs to combat this problem. NHTSA's State and Community grant program then provides seed money to help fund efforts to fight drunk and drugged driving.

CAFE STANDARDS

Question: Do you support the Corporate Average Fuel Economy (CAFE) standards provided under the Motor Vehicle Information and Cost Savings Act?

Answer: I believe that CAFE standards have served their purpose, and are now anachronisms that are introducing substantial distortions in the economy, causing harm to our trade balance, threatening American jobs, and adversely affecting consumer choices in the marketplace. Thus, I believe that the standards program should be repealed by Congress. Nonetheless, until that occurs, I will ensure that DOT fulfills its responsibilities under the fuel economy law.

QUESTION.--

You have said that you support the objectives for the U.S. maritime industry as set out in Section 101 of the Merchant Marine Act of 1936.

One of the objectives set out in that Act is that all domestic waterborne commerce be carried on U.S. built, U.S.-manned, U.S.-flagged vessels (also the Jones Act).

You also have said you support the provision in the proposed Free Trade Agreement with Canada which would allow Canadian vessels into our Jones Act trades, if they are expanded.

Isn't your position inconsistent?

Answer:

No. The Administration has consistently been on record as supporting the Jones Act. During the deliberations with Canada on the Free Trade Area Agreement, the Department has continually pressed our concerns relating to the Jones Act and the national defense implications. While recognizing the overall benefits that would be derived from a free trade agreement with Canada, we continue to work within the Executive Branch to make certain that the legitimate needs of the maritime industry are protected within that context.

Question: You have stated that additional shipbuilding and repair work are needed for U.S. shipyards if the United States is to maintain a shipbuilding and repair industry capable of meeting mobilization requirements.

A. Do you believe Government assistance in some form is necessary to accomplish these goals?

Answer: The outlook for the future of the U.S. shipyards is a matter of considerable concern. The recent delivery of the "last" merchant ship under construction in U.S. yards was a stark reminder, if one were needed, that the primary customer of U.S. shipyards at present is the U.S. Navy. The Coast Guard is also providing some work. As the Navy building program slows, the only work available to maintain the shipyard base will be Navy and Coast Guard repair and modernization work and some domestic (Jones Act) building and repair work. The former Secretary of the Navy (Lehman) has expressed concern that the Navy work load will be insufficient to retain an adequate basis.

We share that concern. We believe that the Government can play a technical assistance role in improving the productivity of U.S. shipyards, both public and private, so as to reduce costs, improve quality and shorten delivery schedules. To that end, the Maritime Administration will continue to sponsor joint Government-industry national shipbuilding research initiatives which have in the past produced substantial savings in shipbuilding costs.

B. Can the Committee expect DOT to submit a proposal?

Answer: In its budget submission for Fiscal Year 1988 and 1989, the DOT has requested funds to continue support of the research programs.

As you are aware, the Commission on Merchant Marine and Defense is addressing this very issue. I pledge to review their recommendations and work with the Department of Defense to implement meritorious/cost-effective recommendations.

Question: You have acknowledged that the deteriorating condition of our merchant marine is a danger to national security. You went on to say that·

> The challenge before the Departments of Defense and Transportation is to recognize the necessity of balancing the competing interests and allotting future resources to reflect the national security decisions made by the President.

What does that mean in terms of the specific role of the Department of Transportation?

Answer: The U.S.-flag merchant fleet plays a vital role in support of military forces and essential economic requirements in wartime. The Department of Transportation, through its promotional programs, supports the fleet, attempting to assure its long-term viability. The Administration's ODS reform proposal -- which provides financial reform of the present subsidy program, regulatory reform, and the authority for the worldwide acquisition of vessels -- will help to do that. It will also provide operating subsidies to additional U.S. carriers in international trade. Such an ODS program will result in an increase in the efficiency of the Government's programs while assuring adequate sealift capability.

In 1981, the President designated the Secretary of Transportation as the Administration's maritime spokesman. It is my intention to actively carry out that responsibility, including playing an aggressive role in negotiations with our trading partners to assure our carriers of fair treatment.

Question.--

The Administration has submitted an ODS reform proposal, and the Committee is in the process of receiving comments on it.

We already know that some of its provisions are controversial. Since most legislation is the result of compromise, is it accurate to assume that the Administration will be agreeable to compromising, if that is necessary?

Answer:

Yes. We submitted the legislation in an effort to make a constructive contribution to the debate on reform of the Operating Differential Subsidy system and to deregulate U.S. international shipping. We realize that our proposal contains some controversial provisions.

We are prepared to work with Congress and industry in an attempt to fashion legislation which would accomplish, in the most fiscally responsible way, the goals set out in our letter of transmittal.

POSTHEARING QUESTIONS OF SENATOR INOUYE AND THE ANSWERS

1. When did you consult with industry and congressional committees concerning the Transportation Annex in the proposed Free Trade Agreement with Canada? Was there any consultation before maritime matters were put on the table?

The Office of the United States Trade Representative conducted a series of briefings for representatives of U.S. industry on its negotiating policy for the services sector during the fall of 1986 and summer of 1987, primarily through the Services Policy Advisory Committee, which includes a representative of the U.S. maritime industry. In these meetings, U.S. industry was informed that all services sectors, including transportation, "were on the table" in the U.S.-Canada FTA negotiations. Beginning in April of this year there have been briefings for the maritime industry on the U.S.-Canada FTA negotiations, most of which were held at the Department of Transportation. As reported in the October 6 Journal of Commerce, on October 5 the maritime industry received the first briefing of any industry group on the elements of the agreement initialed by the U.S. and Canada on October 3, 1987. During the same week, we also conducted extensive briefings on the FTA for Congressional staff. Since then, we have continued to consult with the industry on the negotiation of the Transportation Annex, and have solicited their comments on various drafts of that document.

2. You have said the Transportation Annex does not propose substantial amendment to the Jones Act for Canada. Isn't it true that what is proposed for Canada is the biggest single exception to the Jones Act since the original Cabotage laws were written?

The Transportation Annex does not require or propose any amendment or exception whatsoever to the Jones Act in its present form. It merely requires that future expansions of the Jones Act that are not required by national security considerations provide Canadians the benefits of national treatment to the extent of that expansion.

3. The Transportation Annex will allow Canadians to own American-flag vessels by removing restriction of investment for Canadians. It seems that this may violate the Jones Act; destroy the citizenship requirement under Section 2 of the 1920 Act; and raise significant questions on the right to transfer flag and ownership under Section 9 of the 1916 Act?

The proposed FTA Agreement with Canada does not in any way remove current investment restrictions for Canadians. The Transportation Annex grandfathers existing law, including the U.S. citizen investment requirements of the Jones Act, the Merchant Marine Act of 1920 and the Shipping Act, 1916.

4. The Transportation Annex has excluded subsidies. Do you know what subsidies the Canadian Merchant Marine receives from the Canadian government. For example, I believe they can write off their ships in three years. Clearly this language seems to be for their benefit.

The exception for subsidies contained in the Transportation Annex was proposed by the United States to protect existing U.S. promotional programs for the U.S. industry. We have reviewed the economic benefits Canada affords its merchant marine. While our review of Canadian programs is not yet complete, Canada does not appear to have a subsidy program comparable to the Operating Differential Subsidy established by the Merchant Marine Act, 1936.

5. With regard to protection for defense interest, if we extended the Jones Act to fully cover Guam and put it into the legislation, we are doing so to protect our defense interest and to conform with the national security exclusion. I assume this would not violate the Transportation Annex. Will you please comment?

The national security exception, contained in the most recent draft of the Transportation Annex / would provide that:

> Nothing in this Agreement shall prevent either Party from taking any action, including introducing any measure, that it considers necessary for the protection of its essential security interests, relating to: the provision of transportation services for military personnel, arms fissionable materials or the materials from which they are derived, ammunition and implements of war and such other personnel, goods and materials as may be transported directly or indirectly for the purpose of supplying a military establishment; the preservation of shipyard capacity to meet military mobilization requirements; actions taken in time of war or other emergency in international relations; or actions taken pursuant to its obligations under the United Nations Charter for the maintenance of international peace and security. Nothing in this Agreement shall require either Party to furnish information the disclosure of which it considers contrary to its essential security interests.

We believe that this exception is broad enough to encompass all maritime measures legitimately required in the interest of national security. At this juncture we have not attempted to identify the circumstances under which it might be applied to the maritime industry.

Deregulation of our domestic oceanborne trades has been under consideration within the Department of Transportation over the past few years. What are your views?

Answer:

The Department of Transportation has reviewed proposals that would deregulate all forms of domestic transportation. In this regard, the Department is reviewing reforms to the Intercoastal Shipping Act, 1933, which vests the Federal Maritime Commission with authority to regulate rates in the trades between the contiguous 48 states and Hawaii, Alaska, Guam, American Samoa, the U.S. Virgin Islands, Wake, Midway, and Johnston Islands, and the Northern Marianas. The FMC's regulatory authority, comparable to that exercised by public utility commissions over monopoly industries, is far more extensive than that which governs rates in international shipping. Pending statutory deregulation, which is supported by FMC, the Department of Transportation has repeatedly urged the Commission to reduce rate regulation in the domestic offshore trades through the discretion available to it under the Intercoastal Shipping Act and the Shipping Act of 1916. I support this approach.

POSTHEARING QUESTIONS OF SENATOR FORD AND THE ANSWERS

QUESTION 1: Mr. Burnley, you were involved in the decision to appoint Mr. McArtor Administrator and in the Secretary's recent decision to increase the Administrator's power to exercise the agency's authorities; based on these two developments, I would like to hear your views on the Department of Transportation's future "micromanagement" of the Federal Aviation Administration's jurisdiction.

ANSWER: I am pleased to have the opportunity to comment on these issues. I look forward to working with Alan McArtor on the key resource, policy and safety challenges we face.

During the last several years we have worked closely with FAA in identifying safety and security issues, in assessing critical resource needs, and in processing major acquisitions. We have also been continually examining specific areas where we saw opportunities to change our existing relationships by delegating additional authority to the FAA in order to improve our response to the challenges of a modern and safe transportation system.

As you note, we recently increased delegations in two specific administrative areas: executive personnel and procurement. It is essential that the Secretary and Deputy Secretary manage executive resources in DOT, as is the case in virtually all Cabinet Departments. Our recent delegation to Departmental administrations provides them the authority to reassign career SES members to established positions below the Associate Administrator level and to approve certain appointments. FAA had previously been delegated authority to detail SES members -- no other Departmental administration had such authority at the time.

The delegation of procurement authority represents the culmination of over a year of discussion between the operating administrations and OST on the optimum level of oversight and review. The revisions represent the maturity of Departmental acquisition systems and the expertise of procurement professionals. Recent assessments of the procurement operations and oversight capabilities of the Coast Guard and the FAA have made OST review -- especially of smaller non-sensitive actions -- unnecessary. Secretary Dole's delegation of acquisition authority represents a thoughtful and well-reasoned approach to the review and approval of Departmental acquisitions -- and an approach which will ensure an acquisition system that processes procurements in a timely and efficient manner.

We have only begun the process of reassessing our relationship with FAA. As I said in my formal statement, I want to work with the Congress, the FAA, and the aviation community in examining and reassessing the FAA's organizational structure and programs which will obviously impact our relationships.

QUESTION: One of those powers given to the Administrator is the day-to-day administration of the Airport Improvement Program and the duty to insure that the airports receiving those funds will be available to all users on fair and reasonable terms and without unjust discrimination. Since he has been sworn in, Administrator McArtor has expressed some strong views on this subject; do you agree with his views?

ANSWER: Administrator McArtor and I agree that airport operators and local communities should have maximum flexibility to ensure that airport development and operations are consistent with local needs. However, it is also our responsibility to maintain a balanced national transportation system. The law authorizing airport grants establishes certain requirements with respect to acceptance of those grants to ensure that Federal interests are protected. For example, the law requires that airports receiving grants be available for public use on fair and reasonable terms and without unjust discrimination. It is the Administrator's job to ensure compliance with the law. I fully support him in that role.

QUESTION: More specifically, Administrator McArtor has indicated his strong disapproval of proposals which would limit access to business and general aviation at New York's LaGuardia and Boston's Logan Air Fields. Do you agree with them? If not, why not?

ANSWER: The federal aviation program, and the grant program in particular, has a long history of nondiscrimination in access to the nation's aviation system, and I subscribe to this approach. The issue of general aviation access to airports is, in my view, more accurately viewed as a symptom of the basic problem we face -- adequate airport capacity. As I stated at my confirmation hearing, the last major new airport in the United States was opened in the 1970's, and only a replacement airport at Denver is on the boards currently. This is an issue which raises enormous emotions in local communities, but the answer is to achieve a national consensus on expanded capacity. This will involve not only national leadership but state and local leadership as well. We look forward to reviewing the specifics of the Massport proposal with an open mind for this reason. I agree with Administrator McArtor that general aviation and business aviation must continue to have reasonable access to the airports that serve our major metropolitan areas.

QUESTION: What positions within your Department and the Executive Branch typically attempt to influence the Administrator's policy on such issues?

ANSWER: As Acting Secretary and as Deputy Secretary, I have welcomed and am comfortable with the important new initiatives which have been undertaken by FAA Administrator McArtor. It is appropriate that the new emphasis on airline accountability for its training, maintenance, and safety practices, as just one example, originate with FAA policymakers and experts. At the same time, the Department's Assistant Secretaries and General Counsel should contribute policy views in their areas of expertise. I cited at my confirmation hearing the General Accounting Office's conclusion that oversight by the Department's procurement specialists improved NAS Plan procurement over an 18-24 month period, though I pointed out that the federal procurement process moves too slowly -- in my judgment -- to yield the best possible results in areas in which technology is evolving rapidly. Also, it is my belief that any Secretary of Transportation is ultimately accountable to the President, Congress, and the public for aviation safety matters, and I would reserve the right to exercise a policy role in this area as appropriate. For example, the work of the Secretary's Safety Review Task Force has had a very positive impact on FAA policies on security and inspections.

QUESTION: I am sure that you share the views of several of my colleagues (in particular Senators Dole and Kassebaum) that the promotion of the sale of business and general aviation aircraft is an appropriate goal for the government. Does this suggest that your Department ought to protect the access of these aircraft to these airports and other key facilities?

ANSWER: The Department will continue to ensure equal access to appropriate facilities for all users, consistent with safety and fair user charge principles. Clearly there are safety considerations that override equal access considerations, and there are fair costing treatment principles that also affect the issue of "protecting access."

Emergency Alteration of Los Angeles TCA

QUESTION: Former Secretary Elizabeth Dole said she fully supported the action taken by Administrator McArtor issuing an emergency order changing the Terminal Control Area (TCA) at Los Angeles International Airport to provide a higher level of flight safety. She said, "We must do whatever is necessary to assure the safety of the traveling public." In his emergency action, Administrator McArtor raised the ceiling of the Los Angeles TCA and eliminated the corridor which allowed VFR aircraft to transit the TCA. Prior to the Administrator's action, aircraft were abloe to proceed through the corridor and were not required to carry transponders nor have special traffic control authorization.

As Secretary of Transportation, would you continue to support the action of the FAA Administrator?

ANSWER: Administrator McArtor took the action he deemed necessary in August to assure flight safety in the Los Angeles TCA.

I understand that he based his decision on the technical advice of agency air traffic experts. Since August, Mr. McArtor and other FAA officials have been working with all components of the aviation community on a permanent plan for the Los Angeles TCA. I trust Mr. McArtor's judgment and support his handling of this problem to date.

Revisions to Existing Terminal Control Areas (TCAs)

QUESTION: At the time of the Los Angeles TCA emergency action taken by Administrator McArtor, he said that the possibility of amending TCAs in other parts of the country as circumstances may dictate was also being considered. He also has several proposed rules under consideration which are intended to expedite improvements in safety. These are:

1. Combine Group I and II TCAs and place a 30 mile requirement at major airports for Mode C from the surface to 12,500 feet.
2. Lateral and vertical expansion of TCAs.
3. A revamping of the Los Angeles TCA.

He said he also intends to move forward with the airport radar service area program, which is now in place at more than 90 airports.

As Secretary of Transportation, would you support these proposed safety measures of the FAA Administrator?

Answer: Yes. Simplification and rationalization of congested airspace is a vital part of our air safety program. Changes to individual TCAs must be accomplished in separate rulemakings, and each action has to be considered on its own merits and in light of circumstances unique to that locality.

All of these initiatives--including the possible establishment of nine additional TCAs--will be undertaken with safety as the first and foremost objective. Industry and public views on alternative methods of achieving the same goal will be given careful consideration through the rulemaking process.

POSTHEARING QUESTIONS OF SENATOR GORE AND THE ANSWERS

1. There appears to be a consensus among auto safety advocates and car manufacturers that the passive restraint provisions of FMVSS 208 will not be rescinded. Do you agree?

ANSWER:

Yes. I expect the rule to be fully implemented.

2. The Department of Transportation promised months ago to rule on whether state mandatory seat belt use laws (MULs) meet DOT's criteria in order to count toward rescission of FMVSS 208, the passive restraint standard. But as of yet, DOT has not ruled, despite requests from Members of Congress and the public.

(a) As Secretary, are you going to formally rule on this in order to eliminate disagreements among seat belt law supporters who frequently are at odds with each other because some favor laws that comply with and others favor laws that do not comply with the DOT rescission criteria?

ANSWER:

The Department has already stated that the California and District of Columbia laws cannot be counted, according ti their own terms. Beyond that, I do not wish to impede the legislative process at the state level, which has resulted in thirty laws being enacted. When and if it becomes apparent that we may be approaching the point where two thirds of the population is covered by laws that may meet the criteria, I will rule on the individual laws. That currently is not the case.

(b) Do you have any intention of changing the criteria for rescission? If so, how?

ANSWER:

I do not.

(c) Are you planning to amend the FMVSS 208 in any way? If so, how?

ANSWER:

I do not intend to make any changes to FMVSS 208 that would weaken the automatic restraint requirements. However, the standard is broader in scope than the automatic restraint provisions and I would not wish to rule out any possible future modifications that may serve to improve the effectiveness of the standard.

3. The Court of Appeals for the D.C. Circuit made it clear that "none of these state (MULs) apparently meets DOT's specific requirements." Do you disagree? If so, please explain which ones comply and why?

ANSWER:

I do not disagree with the Court's statement, which applied to the state laws discussed in the pleadings filed in that litigation.

4. (a) Many of the enacted MULs do not comply with the Department's $25 minimum fine. Would a MUL such as the one enacted in Kansas imposing a maximum fine of $10 count towards rescission of the passive restraint requirement? Would Connecticut's MUL carrying a fine of $15 count?

(b) Many of the enacted MULs do not permit police officers to stop motorists simply for failure to wear a seatbelt. They must first be stopped for some other traffic offense. Do these laws comply with DOT's criterian that an MUL require that all front seat occupants must have seat belts fastened "at all times while the vehicle is in forward motion"? How could you possibly count these MUL's toward rescission?

(c) One of DOT's minimum criteria for a complying MUL is that the MUL have a mitigation of damages provision. Again, most of the MULs passed do not have a provision or allow mitigation for only de minimus amounts. Would these laws count toward rescission? What about laws expressly repudiating mitigation of damages?

ANSWER:

The criteria in the rule are reasonably explicit. There are no additional criteria, beyond those stated in the rule. All of the criteria in the rule must be met in order for a MUL to count toward recission. Passage and effective enforcement of state safety belt use laws, whether or not meeting each and every one of the rule's criteria, saves lives. I do not want to risk impeding the national trend of enactment of safety belt laws by premature rulings. As I stated in my response to Question #2, I do not plan to rule on the specifics of any state-enacted MUL until and unless it is apparent that close to two thirds of the population may be covered by a MUL meeting the criteria.

5. I appreciate that usage rates go up immediately after an MUL passed, but it is also known that they then fall, or level off. Furthermore, in the past, seatbelt laws have not always produced the results anticipated. For example, in Illinois it was projected that 300 lives would be saved by its MUL. But data show that on 32 lives were saved in the first year. Considering these conditions, what measures will you take the ensure that the passive restraint standard remains in place?

ANSWER:

I have already stated that I expect the automatic restraint standard to stay in place. No additional measures, with respect to the automatic restraint standard, are necessary.

6. California and the District of Columbia have both passed MULs with "sunset" provisions and many states have included language in the text of their legislation stating that the particular MUL is not intended to delay or rescind implementation of the passive restraint requirement of Standard 208. What is your reaction to this? Don't you think it clearly demonstrates that the states want passive restraints of MULs and passive restraints, as opposed to just MULs? How is a legislator supposed to promote auto safety in his state when, if he votes in favor of a MUL, he jeopardizes implementation of a safer, more effective device, that is, passive restraints? Will DOT rule on the MULs that have been passed, and thereby advise the states, on how they can improve auto safety?

ANSWER:

It would be presumptous of me to assert that I knew the motivation of thousands of state legislators who have voted on safety belt use legislation. The California and District of Columbia MULs mentioned in your question exemplify the fact that a legislator can, if he or she so chooses, vote in favor of a MUL without contributing to any possible rescission of the automatic restraint provisions of FMVSS 208.

QUESTION: Passive restraints have been the subject of extensive rulemaking on the part of DOT for almost twenty years. Do you anticipate similar delays for implementation of other new auto safety devices? If so, why? If not, what do you intend to do differently or more effectively than in the past to prevent this?

ANSWER: I do not anticipate similar delays in implementing other new auto safety devices as and when warranted.

The unique, lengthy history of the passive restraint regulation is attributable in large measure to the numerous court challenges brought by various parties, ranging from the insurance industry to the auto industry and others. These challenges have, themselves, led to delays in implementing the rule over almost two decades.

It is important to note that the 208 rule promulgated by Secretary Dole is saving lives for the first time in the tortured history of this rulemaking. I am proud of the role I played in crafting this rule.

Question: In the past, under former Secretary Dole, DOT has conducted an extensive nationwide campaign advertising the benefits of "buckling up." Do you intend to continue these activities? What kind of advertising budget and program do you plan to undertake to promote passive restraints?

Answer: Yes, we plan to continue working with the Advertising Council on a nationwide campaign to promote safety belt use. This year, as the number of cars equipped with passive restraints increases, NHTSA plans to expand this program to include a reference to this new technology. In addition, NHTSA has extensive plans to increase activities to inform the public about passive restraints. The FY 1987 budget for this program was $1.5 million.

Question: Under Standard 208, 25% of the 1988 model cars must have passive restraints. Since the Department is responsible for ensuring compliance by automakers with the passive restraint requirement of FMVSS 208, what measures to you plan to take to make sure they meet the phase-in requirements? What will you do to ensure that by 1990 all new automobiles have passive restraints?

Answer: When Standard 208 was reissued in 1984, the Department added a requirement for passenger car manufacturers to file annual reports with the Department, and maintain records, concerning their compliance with the phase-in percentages. NHTSA will review these reports carefully each year and will consider appropriate action against any manufacturer that appears to have missed the phase-in percentages.

Beginning on September 1, 1989, all passenger cars manufactured for sale in the United States must be equipped with passive restraints. The Vehicle Safety Act prohibits the sale of any non-conforming vehicle, and also requires the manufacturers to self-certify compliance before offering a vehicle for sale.

Both during and following the phase-in period, the agency will be crash-testing vehicles to confirm compliance with the performance requirements of the standard.

Question: What actions do you intend to take against auto dealers who tout disassembling of passive seat belts? What about demonstrating cars with automatic belts detached and stowed away -- what will you do about this?

Answer: On June 15, 1987, the NHTSA Administrator issued an interpretation of Standard 208 and the Vehicle Safety Act making clear that auto dealers are required by law to demonstrate and deliver their automatic belt-equipped cars with the belts attached.

NHTSA's interpretation also made clear that NHTSA will examine all the facts of any alleged violation to see whether the dealer has engaged in a practice of consistently disconnecting the passive belts before deciding whether to pursue an enforcement action. The Vehicle Safety Act provides for sanctions for violations, including civil penalties and injunctive relief.

Question: As Secretary of Transportation, what other auto safety measures would you work to see implemented?

Answer: I will continue to support the multiple efforts necessary, both in and out of government, for an effective highway safety program -- for improving the safety of drivers, vehicles and roadway. In the area of vehicle safety regulations, my priorities will include continued implementation of automatic crash protection (Standard 208), reviewing side-impact protection (Standard 214), extending passenger-car standards to light trucks and vans where appropriate, pursuing research on stability of light and heavy trucks, and reviewing our system of classifying vehicles for regulatory purposes. I will also support and encourage manufacturers who voluntarily introduce new safety features in cars, such as anti-lock brakes. And we must continue to stress the role of drivers in highway safety, by keeping the public spotlight on the vital issues of drunk and drugged driving, safety belt use, and speeding.

Question: In 1982, NHTSA "terminated" rulemaking of FMVSS 214 saying new and extensive research still needed to be done before the standard could be improved. The agency anticipated rules would be out in a year. They were not. In March, Diane Steed testified before the House Appropriations Committee that a revised 214 would be released shortly.

(a) When will these new standards relating to passenger cars be issued?
(b) What has taken NHTSA so long to develop rules for this very important auto safety matter?

Answer: The Department is completing work on this rulemaking. Side-impact protection research has proven to be extremely complex. Measuring the impact of side-impact protection on injuries has required development of a new crash test dummy and measurement standards. In addition, some side-impact protection technologies which provide improved protection in low speed crashes are not effective in higher speed crashes, and vice-versa. It is very important to ensure that NHTSA issue a standard in which benefits derived from some types of crashes are not offset by disbenefits in other crash types.

Question: Throughout 1979, NHTSA characterized vehicle side-impact protection as its "*highest* short-term occupant protection priority." But in 1981 and 1982 the standard relating to side-impact protection, FMVSS 214, was lowered in priority and tested for compliance as a "Priority Two" concern. Moreover, in 1983 and 1984, out of four possible rankings, it fell to a "Priority Three" standard and was subsequently not tested by the Office of Vehicle Safety Compliance (OVSC). As you know, "Priority Three" standards are not tested by OVSC because of "budget considerations."

(a) As Secretary of Transportation, what kind of testing and research do you plan for an improved and revised FMVSS 214? Would this standard remain ranked, in terms of compliance, as a "Priority Three" tested standard?

Answer: As noted in response to prior questions, I support current efforts to review side-impact protection in passenger cars. NHTSA and other parties have been researching various aspects of this complex subject, and I will support whatever further work may be needed to develop a meaningful and effective standard.

As to compliance with standards already in effect, NHTSA has recently accepted a recommendation from the General Accounting Office to conduct periodic compliance tests for *all* of its vehicle safety standards on a rotational basis. (The agency had previously focused its testing resources on standards thought to present the greatest likelihood of non-compliance, and there has been virtually no reason to suspect non-compliance with Standard 214). In accordance with current policy, NHTSA tested 10 model year 1987 vehicles for Standard 214 compliance, and will test additional vehicles during model year 1988.

Question: Given the agency's own criticism that FMVSS 214 has had "little or no effect on fatalities" in vehicle-to-vehicle side-impact crashes, how would you justify the repeated lowering in overall priority of side-impact protection by the agency?

Answer: It should be noted that current Standard 214 has been effective in reducing fatalities and serious injuries in single-vehicle crashes. Our research efforts may well result in improved side-impact protection which could provide improved protection in other types of crashes as well.

Question: As you know, FMVSS 214 applies only to cars. Why has the Department still not developed rulemaking for side-impact protection for light trucks, vans, and MPVs, especially since eight years ago NHTSA announced that "improving the safety of people involved in side crashes in passenger cars, light trucks, vans and MPVs is NHTSA's highest short-term occupant protection priority"?

Answer: Our first priority is to review side-impact protection for passenger cars, since we believe it makes sense to focus our resources first on where the greatest potential exists for saving lives and preventing injuries. Thus, we have done considerable research on passenger-car side impact.

NHTSA is also pursuing the goal of improved side-impact for light trucks and vans. Because of the different size and service characteristics of those vehicles, we cannot simply transfer our passenger-car research and standards. For that reason, NHTSA is pursuing a separate research program (including development of a separate side-impact dummy) specifically for light trucks.

Question: Are you planning to issue side-impact standards for these vehicles soon?

Answer: NHTSA is completing its work on side-impact in passenger cars. It is our intention to move toward improved side-impact protection for passenger cars, as well as light trucks if the research supports the need for rulemaking.

Question: In 1978, NHTSA began implementation of FMVSS 215 -- a safety standard in which passenger cars were reqruied to be equipped with front and rear bumpers that were capable of preventing body damage in 5 mph impacts. And in 1979, NHTSA further validated this rule saying its 5 mph rule was chosen over a 2.5 mph standard because the benefits of a 5 mph standard were greater, netting an approximate savings of $400 million annually. Since then, however, NHTSA has lowered the bumper standard to a 2.5 mph criterion.

(a) Why has the agency changed its position on this matter?

Answer: NHTSA conducted an extensive rulemaking proceeding in 1981 and 1982 to review the bumper standard. The agency compared both the costs and the benefits of different impact standards. For example, a 2.5 mph bumper is more susceptible to damage in very low-speed collisions compared to a 5 mph bumper, but it costs less to begin with, and less to replace. The agency determined that the 2.5 mph minimum standard would provide the maximum net economic benefits to consumers, which is the statutory criterion prescribed by Title I of the Cost Savings Act for the bumper standard. NHTSA also conducted a follow-up study of actual impacts, and determined that the 2.5 mph bumper was slightly more cost-beneficial to consumers than the prior 5 mph bumper.

Question: (b) How do you respond to the recent criticism that now there is more damage in minor impacts because of this downgrading?

Answer: It is true that 2.5 mph bumpers will sustain more damage than 5.0 mph bumpers, if the vehicle is involved in a very low-speed collision (i.e., between 2.5 and 5.0 mph). However, the overwhelming majority of crashes occur at higher speeds, for which even a 5.0 mph bumper cannot provide protection. It is also true that there are cost savings for manufacturers and consumers with a 2.5 mph bumper, due to lower costs of the original equipment and replacement equipment. On balance, NHTSA's analysis indicated that the 2.5 mph bumper was slightly more cost-beneficial. However, the Federal standard is only a minimum. Many automakers have continued to offer the higher-speed bumper on all or some models, which some consumers appear to prefer. Consumers therefore now have a choice in the marketplace.

Question: (c) Will you reinstate the 5 mph standard?

Answer: As noted above, we are required to follow a specific statute (Title I of the Cost Savings Act) in setting the bumper standard -- namely, on the basis of maximum net economic benefits to consumers. NHTSA revised the standard in 1982 on that basis, and its rulemaking was upheld in the courts. If we receive new evidence which would change our analysis, then we would revise the standard accordingly.

POST HEARING QUESTIONS OF SENATOR BENTSEN AND THE ANSWERS

Question 1: Mr. Burnley, the Department has a number of issues facing it within the next several months. Could you briefly tell us in what direction you want to see the Department move, on what issues do you want to concentrate on, and how do you intend to prioritize them?

Answer:

As I have told the Commerce Committee in answer to another question, my primary objective, if confirmed, will be to ensure that the American people have the safest, most efficient transportation system possible. This decade has been a period of extremely rapid change, posing new and often unforeseen challenges to each mode of transportation. As these industries adjust to reduced levels of federally-imposed economic regulation and a more competitive world economy, the Department plays a key leadership role both in facilitating the adjustment process and most importantly, in protecting the safety of the traveling public.

This is an especially turbulent time for the aviation, motor carrier and maritime industries. To ensure that we are keeping pace with the changing needs of aviation, I would work with the Congress, the Federal Aviation Administration, and aviation user groups in taking a hard look at the structure of the FAA and proposing reforms as necessary.

To ensure that the maritime industry has the necessary flexibility and support it needs to stay competitive, I would make legislative reform of the Operating Differential Subsidy program a priority. I would also continue to emphasize the importance of assuring that our trading partners provide American shipping companies with the same access and opportunities that we provide their maritime industries.

The trucking industry has also undergone major changes that require commensurate adjustments in the way the Department does business. Toward that end, implementation of the Motor Carrier Safety Acts of 1984 and 1986 needs to be expedited. In addition, I would explore further legislative and regulatory reforms to enhance both motor carrier safety and productivity.

If confirmed, I want to emphasize that my efforts over the next few months would be focused not on short term "successes" or "quick fixes", but on the long-term best interests of the traveling public. As we approach the 21st century, we can expect that transportation will continue to experience rapid, constant change and that its importance to our country's well-being can only increase. I would hope that my stewardship of the Department would leave a strong foundation on which my successors could build.

Question:	Like all of us, I have become increasingly concerned about the aviation safety issues. Within the last couple of years, there has been an upward trend in near midair collisions. Both the public perception of what is occurring, and the things we all see and hear about, are undermining confidence in our national airspace system. What do you perceive to be the problem.
Answer:	Although some of the growth in near midair collisions (NMACs) obviously stems from our improved reporting system and the publicity given to the phenomenon, FAA and the Department continue to be concerned about the increase in NMACs. We are taking steps to address the issue, and the various actions planned or underway include the following:

- the recently proposed rule on Traffic Alert and Collision Avoidance System (TCAS), which provides warnings and guidance to airline cockpit crews with respect to approaching aircraft;
- a program to simplify and redesign Terminal Control Areas (TCAs) and to create nine additional TCAs;
- promotional and educational initiatives, such as "Back-to-Basics";
- rulemaking actions to require the use of Mode C (altitude-reporting) transponders in all TCAs and also in areas out to 30 miles from TCA primary airports and up to 12,500 feet mean sea level;
- a possible further rulemaking expanding the Mode C requirement to additional major airports and other airspace;
- establishment of additional Airport Radar Service Areas (ARSAs);
- stepped-up enforcement against TCA/ARSA violators; and
- software enhancements for detection of VFR/Mode C "intruders" to provide en route centers with an automatic conflict alert.

We note that NMAC reports are not a good indicator of air traffic control system performance since 93 percent of all incidents involve one or both aircraft operating under visual flight rules or "VFR" (under which pilots are responsible for maintaining their own separation from the other aircraft).

QUESTION: As you may know, Mr. Burnley, the Senate recently passed the Airport & Airway Capacity Expansion Act. Included in that bill is a Finance Committee amendment which Senator Packwood and I sponsored that would automatically reduce by 50% the federal excise taxes charged for passenger tickets, international departure, air freight, and general aviation fuels if the unobligated balance in the Aviation Trust Fund exceeds $3 billion at the end of fiscal year 1990. Those of us on the Finance Committee, and I believe a majority of the members of the Commerce Committee, have been concerned over the tendency in recent years to accumulate funds in the Aviation Trust Fund, but not spend the authorized amounts for the purposes for which the taxes are collected — to expand and improve the nation's airspace system and airports. If I am not mistaken, the Trust Fund's unobligated balance at the end of the 1987 fiscal year was in the neighborhood of $5.6 billion. I just don't know how we can justify this given the need to modernize the system as rapidly as possible.

What I want to know from you, Mr. Burnley, is whether you support the approach Congress has taken with this legislation? If not, do you intend to recommend a veto of this legislation to the President? If so, what alternatives do you suggest?

ANSWER: I share your concern about the large Trust Fund surplus. It creates the impression that aviation users are being taxed but are not getting the services for which they are paying. That is not correct, however. The law provides for Trust Fund support of improvements to the airspace system and the Nation's airports, which are critically important, but the Trust Fund is also authorized to be used to pay for about half of FAA's operational expenses. Those include the salaries of air traffic controllers, maintenance personnel, safety inspectors, and security personnel, all of whom are essential to the safe operation of our national aviation system. Because of a provision in the authorizing statute, however, only about one quarter of FAA's operational expenses have been paid for from the Trust Fund over the past six years. That provision — in reality, simply an accounting issue, since the operational expenses must be paid, and if they are not paid from the Trust Fund, then they must be paid from general tax revenues — accounts for two-thirds of the current Trust Fund surplus.

I would urge the conferees on this legislation to reconsider the trigger and whether the better solution to the problem of a Trust Fund surplus is to eliminate the provision that reduces Trust Fund support of FAA's operational expenses. I must reserve judgment on what recommendation I will make to the President, because I do not know what the final legislation will look like. However, it is my hope and present expectation that I will be able to recommend that he sign such legislation.

QUESTION: During the Conrail stock offering minority firms were given a chance to participate as "Special Bracket" firms. Six underwriting firms from across the United States were chosen to participate from among twelve firms submitting written proposals. A firm from San Antonio -- I believe the only Mexican-American firm in the United States -- submitted a proposal, but was not chosen. Can this firm be informed as soon as possible about why it was not chosen so it can impove its chances in future offerings?

ANSWER: As you know, the co-lead managers of the public offering selected the Special Bracket firms under a minority participation plan approved by the Department. We recently received a letter, which I am sending to you under separate cover, from Goldman, Sachs & Co (the book running manager) explaining why Southwestern Capital Markets, Inc. was not selected for the Special Bracket.

> Goldman Sachs noted that "[w]hile Southwestern compared favorably with certain of the other candidates in regard to certain criteria, it acknowledged that it had no relevant experience in three areas: (1) the underwriting of equity securities; (2) the distribution of equity securities; and (3) the management of equity offerings. In the view of the Co-Lead Managers, the distribution of equity securities in a large-scale public offering requires different skills and experience than those gained from participation in non-regulated municipal offerings. Given the scope of the Conrail offering, it was essential that the firms participating in the Special Bracket have some experience in equity distribution and a familiarity with the Securities Acts considerations relevant thereto. . . . In the considered judgment of all the Co-Lead Managers, Southwestern did not demonstrate sufficient underwriting experience in equity offerings, relative to the other Special Bracket candidates, to be included in the Special Bracket of the Conrail offering."

Question: I have been in touch with the Department about the UMTA charter bus regulations promulgated earlier this year. While I support the goal of the regulations and understand the underlying premise for them -- to prevent unfair competition from public transit in the charter bus area -- I think the regs go too far by placing a total ban on public transit authorities to provide charter bus service if there is a single private operator within the area "willing and able" to provide the service. Under the regs, "willing and able" does not include notions of capacity, so a private operator with one bus is considered to be as willing and able as an operator with 100 buses. If any willing and able operator is within the service area, the public transit authority cannot provide charter service. In my own state, I have heard from handicap organizations, senior citizen groups, churches and others about the burden these regs place on them. I had to obtain a special exemption from the Secretary when the Pope visited Texas in September. Both the House and Senate Appropriations Reports have included language about the hardship these regs may be causing some segments of the community. I have noted my concern that the regs are too heavily tilted in one direction. In light of this, have you any inclination whatsoever to have UMTA revisit the regs to see if the impact may be minimized on charitable and other non-profit organizations?

Answer: There are five exceptions to the regulation which allow public operators to provide charter service. Under the exceptions, a public authority may provide charter service when: (1) there is no "willing and able" private operator; (2) private operators lack the capacity to perform a certain charter trip; (3) private operators lack vehicles accessible to the elderly and handicapped; (4) in a non-urbanized area, private operators are located too far from the origin of service; and (5) there is an event of a special or extraordinary nature.

In addition to these exceptions, public authorities may, through their annual charter notice, help private operators decide whether or not they are truly "willing and able." Careful descriptions of the charter trips to be performed may allow private operators to decide whether they actually desire to perform the trips in question. Moreover, a grantee may perform a certain charter trip, even if there are "willing and able" private operators in its service area, when there is an agreement to this effect between the grantee and the private operators. This agreement to allow the public authority to provide certain trips must be referred to in its annual charter notice.

Finally, given the concerns mentioned in the Senate and House Report language accompanying the FY 1988 DOT Appropriations bill (H.R. 2890), UMTA is studying the possibility of creating a special exception for certain nonprofit groups. UMTA is preparing to issue a notice of proposed rulemaking that will address this issue and, if it concludes that an exception for charitable or nonprofit groups is necessary, will propose a change in the regulation shortly thereafter.

QUESTION: I am also concerned about the adequacy of the guidelines for the transportation of nuclear waste. What steps will you take to ensure that the transportation of nuclear waste will meet the highest safety standards and will not be transported through major urban, densely populated, environmentally-sensitive areas? What division of the Department will be responsible for coordinating transportation issues with the Department of Energy? Will the public have an opportunity to participate in the establishment or modification of guidelines on the subject?

ANSWER: I believe that the Department's current program for the oversight of nuclear waste transportation is effective. We have a comprehensive set of regulations governing the transportation of nuclear waste. These include regulations regarding the cask, driver qualifications, and training, labeling, placarding, emergency response and routing. A key component is our highway routing rule for the transportation of nuclear materials, which requires shipments of spent nuclear fuel to travel over Interstate highways (including the use of beltways where present) or alternative routes designated by states. Consequently, if a state believes that an Interstate highway through an urban area is not the safest choice of routes, it may adopt alternate routes so long as it does so in accordance with DOT guidelines. These guidelines require that routes be established under a process which considers the overall safety of the proposed route. In our reauthorization proposal, we would buttress this program by requiring an adopting state to obtain the agreement of an adjoining state, or if agreement can not be reached, the Department would resolve the dispute through an arbitration process. It is important to note that a key requirement of the state route designation procedure that we would adopt under our proposed legislation would be public input through hearings and the submission of written views.

Further, in FY 1988 DOT has requested funds to analyze risks and impacts of nuclear transportation routes. The results of this effort will be available to the States, the public, and Congress.

Finally, in our reauthorization proposal the Department has asked for authority to "permit" motor carriers of high level nuclear waste. Such authority would assure increased oversight of such transporters and authorize the Department to prevent carriers with poor safety records from transporting such material.

Within the Department, the Research and Special Programs Administration is responsible for managing the hazardous materials transportation safety program, including the coordination of nuclear transportation issues with DOE.

Of course, the public may comment on any current regulation or proposed regulation.

Liability Insurance- Small Motor Carriers

Question 7: Finally, I am concerned about a matter that has been brought to my attention by more than one small business. It has to do with the Motor Carrier Act of 1980 and the requirement that companies which transport hazardous materials in cargo tank trucks have a minimum of $5 million worth of insurance coverage on their vehicles. Companies operating with less than the required amount of coverage are subject to civil penalties up to $10,000 per day for each violation, I believe.

As you can imagine with the "liability insurance crisis" the country seems to have experienced recently many small companies in the hazardous cargo transport business have found it difficult, if not impossible, to obtain the required amount of insurance, let alone afford it. I know one of my constituents tried over forty insurers before he was able to obtain a policy, and then at very steep premiums after the crisis subsided a bit. I understand that the Federal Highway Administration has recently levied substantial fines against a number of small businesses in my region of the country. At least one of these firms distributed oxygen to rural hospitals which depended on it to deliver the hospital's oxygen supply. Thus this firm faced getting fined by FHWA or jeopardizing serious medical needs. That's a bad choice to have to make.

I am told that decisions like these are still being faced by some businesses as they cannot get insurance, and they may well have to shut down their businesses. I am concerned about this. I am especially concerned about fines being levied on people and firms which have tried in good faith and can document their efforts, to obtain the needed liability insurance coverage.

Assuming that we continue to require companies which transport hazardous materials to carry certain levels of insurance, would you support the creation of a federal risk pool to guarantee that small businesses -- so many times the economic backbone of a community -- with documented safety records could remain in business and affordably comply with insurance requirements? Would you be willing to undertake an examination or a study to see what other alternatives are available?

Answer:

As you pointed out, the Congress established in the 1980 Act the minimum levels of financial responsibility which motor carriers of property must possess. The DOT gets many inquiries from large and small carriers of hazardous materials on these requirements. Given these limits, we agree that alternative and innovative ways are needed to help carriers with a good safety record comply with the insurance coverage levels. In this regard, the Department has recognized motor carrier "risk retention groups" or insurance pools organized under state insurance regulations as an acceptable means of meeting the insurance requirements of the Act. We recommend that motor carriers investigate with appropriate state agencies the potential for establishing such pools for small businesses. We would not object to continued study of the problems encountered by small motor carriers in obtaining the needed insurance levels.

QUESTION: Senator Bentsen. Mr. Burnley, the House and Senate Appropriations Committees have appropriated $2.5 million since 1985 to initiate a cold weather transit technology program at Notre Dame University, yet the Urban Mass Transportation Administration (UMTA) has refused to obligate these funds for their intended purposes. In these times of budgetary constraints, I can see little usefulness in appropriating funds for an important program, and an agency, of its own accord, refusing to comply with a congressional directive.

Mr. Burnley, What are your thoughts on the Cold Weather Transit Technology Program?

ANSWER: Funds were obligated on February 14, 1987, in the amount of $2,343,000 to the Notre Dame University for continuation of the Cold Weather Transit Technology Development and Demonstration Program. Specifically these funds will be used to study and demonstrate techniques of ameliorating the operational problems caused by ice and snow on third rails and track switches.

The congressional earmark was $2.5 million of FY 1986 funds. This amount was reduced by 4.3 percent ($107,000) because of the Gramm-Rudman-Hollings Deficit Reduction Act, which was applied across the board to all UMTA programs in FY 1986. An additional $50,000 of this earmark was utilized for the congressionally directed study by TSC to evaluate the program. The study was submitted to Congress in August 1986.

The University of Notre Dame received the formal grant documents on March 13, 1987. The grant was released by the OST Office of Congressional Affairs on March 12, 1987. As of today the University has not signed the documents accepting the grant under the terms given by UMTA. At the request of the University we have granted them two extensions for signing the grant.

Since May of this year we have had repeated meetings with Notre Dame to reach an agreeable scope of work. We believed we had reached an agreement on November 6, 1987, during a meeting of Notre Dame and UMTA. However, on November 12, 1987, we were advised that the verbal agreement we negotiated was unacceptable to the University. We will continue to work with the University in preparing a scope of work that is agreeable to them and that also may provide a practical application for this technology.

POSTHEARING QUESTIONS OF SENATOR KERRY AND THE ANSWERS

Question: In your view, what is an appropriate and specific time frame that you suggest we should give states in order to adopt a national uniform handicapped parking system before a legislative option is necessary? How would you define states "moving quickly" before the need arises to "look into legislation"?

Answer: Because some State legislatures meet only once every two years, I believe that we should allow up to 24 months for State consideration of this issue. This time frame will enable us to provide assistance and encouragement to the States to consider a uniform, reciprocal handicapped parking system, and will enable the States to consider whether to enact appropriate legislation to implement such a system. However, I will be prepared to reconsider should it become apparent that we are not making substantial progress at the state level.

In our recent report to Congress on this issue, we recommended that the states should adopt the model reciprocity provisions in the Uniform Vehicle Code. That would assure equal treatment of handicapped motorists, without regard to state of residence. I plan to follow up on this report with a letter to each of the governors, urging them to adopt the Uniform Vehicle Code provisions, and asking that they report back to me. We will also work closely with the States, through our regional offices, and through national organizations such as the American Association of Motor Vehicle Administrators, the International Association of Chiefs of Police, and the National Association of Governors' Highway Safety Representatives.

Question: Are you willing to endorse a legislative uniform handicapped parking system option, identical to the provision in the NHTSA bill if a delay clause of 12 months were added; this would allow for states on a volunteer basis to establish a uniform parking system?

Answer: I cannot agree that adding a delay clause of 12 months is enough to transform the provision in the NHTSA bill into a "volunteer basis" compliance scheme. The provision in the NHTSA bill would require the Department to withhold a portion of a State's Section 402 highway safety grant funds if it did not comply with several specific handicapped parking provisions. Adding 12 months for the States to come into compliance does not remove the funding sanction. Since Section 402 funds are used for a broad range of important traffic safety programs, such as drunk driving enforcement, speeding violation enforcement, child safety seat education programs, and other high priority safety efforts, we believe that withholding funds from this program would be counterproductive. However, I want to reemphasize my willingness to reconsider the need for federal legislation if substantial progress is not being made in the near future.

QUESTION: Mr. Burnley, I would like to thank you for working with me and with other members of the Washington State Delegation in arranging a DOT field hearing in Seattle on the Seattle-Tokyo route case. Can you tell me your view as to whether local community concerns should be considered in these cases, and what weight should be given to such factors as the service record of the incumbent airline, the employment impact on the gateway city and the views of the local community leaders?

ANSWER: Local and community concerns have always been, and will continue to be, a factor to which we give careful consideration in international route cases. The relative amount of weight which should be placed on these considerations would necessarily vary from case to case depending on the degree to which other factors, such as fare and service proposals or structural considerations, appear to be decisive. However, I can assure you that I intend to continue the policy of encouraging the full participation of interested civic parties in all carrier selection cases heard before the Department.

POSTHEARING QUESTIONS OF SENATOR ADAMS AND THE ANSWERS

QUESTION: The Senate recently reauthorized spending from the Aviation Trust Fund for the Airport Improvement Program. This legislation would provide funding to expand airport capacity, to hire new air traffic controllers, and to upgrade existing facilities at the same time. I understand that the FAA just last month changed the criteria for constructing new air traffic control towers that make it more difficult for airports without towers to obtain one. Can you comment on that apparent inconsistency?

ANSWER: Although there has been a great deal of confusion on this issue, the FAA has not changed the criteria by which it selects airports for air traffic control towers and other navigational aids.

In reaching decisions on opening new towers or installing new navigational aids at airports, FAA has used counts of air carrier operations and operations by air taxis and commuters to provide a rough estimate of the benefits of the new facilities. If airports appear to qualify on the basis of that estimate, a more detailed estimate of benefits is developed based on a number of factors, including number of passengers served, types of aircraft using the airport, terrain, weather, and so forth. It is that more detailed estimate that becomes the basis of a decision on whether an airport qualifies for a new tower or navigational aid.

Until October 25, 1987, air traffic controllers generally used 2-letter and 3-letter identifying codes issued by the International Civil Aviation Organization (ICAO) to distinguish between air carrier operations and operations by air taxis and commuters. Most air carriers operated with 2-letter codes, and most air taxis and commuters operated with 3-letter codes. Generally, the 2-letter/3-letter distinction corresponded to operations by aircraft with more than 60 seats and operations by aircraft with 60 or fewer seats, respectively. Where they did not, if FAA knew of the discrepancy, the data were adjusted to conform to a distinction between operations based on the 60-seat cut-off.

On October 25, ICAO began using 3-letter codes for all commercial operations. FAA needed a new method of distinguishing among commercial operations and proposed to distinguish on the basis of whether aircraft have more than 60 seats or 60 or fewer seats. That is, FAA proposed to maintain the status quo.

I understand that concerns were expressed by representatives of the aviation community that the 2-letter/3-letter distinction corresponded to a 30-seat cut-off, so they believed that FAA was making it more difficult for airports to qualify for control towers. We have tried to clarify both that FAA's proposal for a 60-seat cut-off really was maintenance of the status quo and that the analysis based on counts of air carrier vs. air taxi/commuter operations is only a preliminary one, and not the determining factor in whether an airport qualifies for a new facility.

We are concerned about an amendment relating to this issue added to the reauthorization bill on the Senate floor. We are working with Senate and House committee staff to develop an acceptable compromise.

Question: Truck safety has been a focus of great concern to the Commerce Committee. Last year there were over 38,000 truck-related accidents and their numbers are steadily rising. Inadequate and faulty truck brakes are one of the major causes of accidents. Ten years ago, when I was Secretary, NHTSA issued 60 miles per hour braking distance requirements for heavy trucks. Those rules were later rescinded, but the technology for truck brakes have been vastly improved in the past ten years. What is the Department doing to reinstate standards for braking distances?

Answer: As you may recall, the heavy truck braking standard issued by NHTSA in the 1970's, which had the effect of requiring anti-lock brake systems, was struck down by the courts in 1978. That decision was highly critical of the absence of real-world testing as to durability, reliability and maintainability of anti-lock systems. As noted in our recent "Section 216" report to Congress, NHTSA has been doing the research necessary to demonstrate the practicability of these systems, and to support future rulemaking. The agency has evaluated some specially-modified European systems at its Ohio test facility, and now plans to conduct a large-scale fleet test using production-line anti-lock systems on in-service trucks.

Question: Specifically, Congress appropriated $1.5 million in the fall of 1986 for a fleet test of new anti-lock brake systems. More money will be appropriated this year. Yet not one truck has been equipped with anti-lock brakes for a DOT fleet test. Isn't it time that you got that effort under way?

Answer: We are pursuing the fleet test. In the Section 216 report, NHTSA outlined its timetable for the various steps needed to carry out this program, which include identifying willing brake manufacturers, truck manufacturers, and truck operators; installation of production-line systems on trucks, along with data collection equipment; and then actual fleet testing for periods long enough to permit adequate evaluation of real-world reliability and durability. I have asked NHTSA to proceed on this multi-year project as quickly as possible.

QUESTION: Another initiative that began when I was Secretary was air bags and automatic seat belts. Yet, here we are ten years later and air bags are only now beginning to be available and required. On this issue, I have a number of inquiries.

Will Standard 208, the Passive Restraint Rule, be rescinded as a result of the passage of state mandatory seat belt laws, or is the air bag here to stay?

ANSWER: Given the commitment to air bag technology by the manufacturers, it is clear that the air bag is here to stay. I do not expect the rule to be rescinded. I should note that the rule has encouraged the passage of seat belt laws in numerous states, resulting in the immediate saving of lives.

QUESTION: Will DOT encourage automakers to make cars with air bags on both the driver and passengers sides, and if so, how?

ANSWER: The Department does encourage manufacturers to equip both the driver and passenger sides with air bag technology. One way it has done so is to provide for a gradual phrase-in of driver side air bags. I believe that this approach has encouraged more manufacturers to introduce air bag technology more quickly than they otherwise would have, and that the gradual phrase-in permits the orderly development of the more complicated passenger side system. The information provided by vehicle manufacturers indicates that those manufacturers that plan to introduce passenger side air bags have already begun the initial stages of design work. The commitment of the financial and engineering resources to the necessary design and development work and the production of manufacturing facilities, along with the regulatory incentive we just provided, will ensure that passenger side systems are placed in cars as quickly as possible.

QUESTION: What type of public education program is planned by DOT and NHTSA to prepare the public for air bags?

ANSWER: NHTSA plans expanded public education and information activities on passive restraints of all types as the number of cars equipped with this new technology increases. For example, NHTSA is working on a new educational film on passible restraints for use by civic and safety groups at the state and local level. The agency has already produced new consumer information materials describing both air bags and automatic safety belts and indicating which makes and models come equipped with various types of passive restraints.

QUESTION: On a related topic, given the fact that one-third of automobile occupant deaths occur in side impact crashes, does DOT have any plans for improving the side impact standard?

ANSWER: The Department is completing work on this rulemaking. Side-impact protection research has proven to be extremely complex. Measuring the impact of side-impact protection on injuries has required development of a new crash test dummy and measurement standards. In addition, some side-impact protection technologies which provide improved protection in low speed crashes are not effective in higher speed crashes, and vice-versa. It is very important to ensure that NHTSA issue a standard in which benefits derived from some types of crashes are not offset by disbenefits in other crash types.

POSTHEARING QUESTIONS OF SENATOR CRANSTON AND THE ANSWERS

MASS TRANSIT SERVICES FOR DISABLED - EFFECT OF 3% COST CAP

QUESTION:

What steps would the Department propose to take to ensure the provision of adequate mass transit services to disabled persons when the transit operator is spending at the 3 percent level, all service criteria are not being met, and the operator refuses to take further steps to meet the criteria?

ANSWER:

- The Department determined, as part of its 1986 rulemaking on this subject, that a recipient who met the service criteria to a level permitted by an expenditure of three percent of its operating expenses would comply with its obligations under the Rehabilitation Act and the Urban Mass Transportation Act.

- Under controlling case law, the Department may not impose undue financial burdens on transit authorities in order to ensure that accessibility improvements are made. Thus, the regulation needed a mechanism to prevent an undue burden from being imposed.

- The Department's regulatory analysis projected that virtually all transit authorities could meet all the criteria with accessible bus service while spending less than the three percent amount, and that many could do so with user-side subsidy services (e.g., a taxi voucher system) as well. Publicly-operated dial-a-ride services in smaller cities might be unable to do so, however.

- The "cost cap" feature of the Department's regulation is being challenged in pending litigation brought by the Eastern Paralyzed Veterans of America and other groups in Federal District Court in Philadelphia. Unless and until an adverse court ruling requires otherwise, the Department stands by its rulemaking decision, consistent with controlling caselaw.

USE OF PARATRANSIT SERVICES BY MENTALLY HANDICAPPED PERSONS

QUESTION:

The 1986 regulations also expressly provide that any special services furnished to disabled persons who are unable to use the transit operator's bus service need not be made available to persons who are unable to use bus service by reason of mental handicap. In fact, the regulations have the effect of discouraging the furnishing of special services to these mentally handicapped persons by excluding the costs of doing so from allowable costs for the purposes of cost limit calculations. What are your views on this discrimination against a class of disabled persons on the part of the federal government?

ANSWER:

- The question refers to the eligibility criterion for special services (e.g., dial-a-ride service, taxi voucher systems). Under this criterion, transit operators which do not have accessible bus systems must provide special services to persons who, by reason of handicap, are physically unable to use the regular bus system.

- It is true that individuals who are unable to use the regular bus system solely because of a mental handicap (e.g., an inability to remember at which stop to leave the bus, a cognitive disability that prevents the effective use of the bus system for transportation) are not required to be provided special service. We recognize that if a transit authority does voluntarily provide special service to such persons, the absence of service can create a hardship.

- The Department's main purpose in defining the eligibility criterion in this way was to avoid biasing transit authorities' decisions about whether to comply with the rule via accessible bus systems or special service. Accessible bus systems cannot effectively provide service to this population. Requiring special services for this population would impose what we estimated could be a substantial cost on special services that would not be borne by accessible bus systems. This would create an economic disincentive for transit authorities to choose special service systems, which typically provide many more trips to disabled persons than accessible bus systems. Creating such an obstacle to a balanced choice between different transportation modes would be undesirable.

- It should be emphasized that the Department's regulation does not prohibit transit authorities from providing special service to mentally handicapped persons. In many cases, transit authorities' responses to local constituencies are likely to result in decisions to provide such service.

PURCHASE OF ACCESSIBLE VEHICLES BY MASS TRANSIT AUTHORITIES

QUESTION:

Access to public transportation services available to the general public is an important civil rights issue for disabled persons. Accessibility provides the end to a form of segregation, an opportunity for integration into society, and the same type of flexibility in the use of mass transit services as is available to all others. As Secretary, what would your response be to handicapped Americans who urge that all mass transit vehicles newly-purchased by recipients of federal financial assistance be accessible to disabled persons, including wheelchair users?

ANSWER:

- The Department's existing rules in this area give transit authorities the option of complying with Federal requirements by making their regular bus service accessible through the purchase of accessible buses.

- The rule gives transit authorities other options as well. To require all bus purchases to be accessible would effectively foreclose these other options, possibly causing some transit authorities to abandon demand-responsive services that some disabled persons find easier to use than regular bus service.

- A requirement that all new transit vehicles purchased with Federal funds be accessible was one of the parts of the Department's 1979 rulemaking on this subject that a Federal Court of Appeals found to exceed our statutory authority, because it imposed undue financial burdens on transit authorities.

- Congress, the last time it considered this issue (section 317(c) of the Surface Transportation Assistance Act of 1982), chose not to mandate that all new transit vehicles purchased with federal financial assistance be accessible.

STATUS OF 504 FEDERALLY CONDUCTED PROGRAMS REGULATION

QUESTION:

In 1978, Congress amended section 504 of the Rehabilitation Act of 1973 to make the prohibition against handicap discrimination applicable to Federal programs -- as well as to federally-assisted programs. However, DOT has yet to prescribe regulations providing for the application of section 504 to DOT programs. What steps would you take as Secretary to expedite the promulgation of these long-awaited regulations?

ANSWER:

- The Department drafted a notice of proposed rulemaking (NPRM) on this subject and transmitted it to the Department of Justice (DOJ) in June 1986. DOJ coordination is required by Executive Order 12250. DOJ responded with comments in October 1987.

- We are now revising the draft NPRM to accommodate DOJ's comments. We will resubmit the NPRM to DOJ for approval, following which the Office of Management and Budget (OMB) must review and approve the NPRM. While it is difficult to predict when these two agencies' reviews will be complete, we hope to be able to publish the NPRM for public comment in early 1988.

- We anticipate having a 60-day comment period on the NPRM. We will then review the comments and make changes as appropriate. DOJ and OMB will then have to review and approve the draft final rule. If these two agencies complete their reviews expeditiously, we would hope to publish a final rule by the end of 1988.

AIR CARRIER ACCESS ACT REGULATORY NEGOTIATION

QUESTION:

More than a year ago, Congress enacted the Air Carrier Access Act of 1986 (Public Law 99-435), which prohibits air carriers from discriminating on the basis of handicap against otherwise qualified handicapped individuals in air transportation. That law also required the Secretary of Transportation to promulgate regulations ensuring nondiscriminatory treatment of qualified handicapped individuals consistent with the safe carriage of all passengers. These regulations were being developed through a non-traditional rulemaking process known as regulatory negotiation. However, after 5 months of intensive negotiations, the talks were broken off, on the next-to-last day of scheduled negotiations, when the disability groups left them because the FAA had taken off the table the issue of seating disabled persons on exit rows, which had been the subject of a great deal of attention in the negotiations. In fact, I am advised that representatives of the disability groups and carriers had reached a tentative agreement. As a consequence, the disability groups allege that the FAA acted in bad faith in withdrawing this issue at the last moment.

A. What is your response to that allegation?

B. What is the Department doing to resume the negotiations process?

C. What, if any, additional actions would you take as Secretary to get the negotiations back on track?

ANSWER:

A.

* The Department does not consider the exit row issue to have been removed from the table. We have regarded and will continue to regard a provision of the Air Carrier Access Act rule concerning seating restrictions as negotiable. Such a provision could, for example, prohibit carriers from discriminating on the basis of handicap in seat assignments, subject to FAA safety requirements.

* During negotiations in October, disability groups had proposed a compromise exit row seating provision that would have permitted carriers to exclude persons from the window seat in an overwing exit row but not most other exit row seats. The carriers and the Department agreed to consider this proposal, but at no time agreed to accept it.

* Any proposed FAA requirement for restricting seating on the basis of safety would be subject, of course, to the notice and comment rulemaking process and to judicial review under the Administrative Procedure Act. These safeguards would allow persons who disagreed with the FAA's safety judgment to challenge the basis for the rulemaking.

B./C.

* We have expressed to all the groups involved in the regulatory negotiation our desire to complete the process. Beginning the day after the disability groups withdrew from the negotiations, we took the initiative to ask the disability groups what we could do to encourage them to return.

* In response to our initiative, the disability groups have asked for a number of clarifications of the Department's views on the regulatory negotiation process in this rulemaking. We have discussed these requests with them, and there appears to be a good possibility of agreement between the Department and the groups on these points. Department officials will be meeting forthwith with representatives of the disability groups on this matter.

- We have also been in contact with the carriers and other members of the negotiation committee, in order to keep them informed and to respond to any concerns they might have about the resumption of the process.

- I am hopeful that the negotiations will resume. The negotiators have already resolved many difficult issues and made progress toward resolving others. Even if negotiations do not resume, this work will not go to waste; we will use the material produced to date by the committee so far as the basis for a DOT proposed rule under the Air Carrier Access Act.

POSTHEARING QUESTIONS OF SENATOR DANFORTH AND THE ANSWERS

THE TRAP DOOR PROVISION IN THE PASSIVE RESTRAINT RULE

QUESTION: I am a firm believer in air bags. DOT estimates indicate that general use of air bags could prevent 8,500 deaths and 130,000 injuries each year. In 1984, Secretary Dole promulgated a passive restraint rule that requires installation of either air bags or automatic seat belts on a phased-in basis. That rule has a trap door provision, if by April 1, 1989, states representing two-thirds of the U.S. population enact seat belt laws that meet certain criteria, the passive restraint rule is revoked. In December 1986 and March 1987, NHTSA indicated it would soon complete its work in reviewing state laws. Where do things stand?

ANSWER:

The Department has already stated that the California and District of Columbia laws cannot be counted, according ti their own terms. Beyond that, I do not wish to impede the legislative process at the state level, which has resulted in thirty laws being enacted. When and if it becomes apparent that we may be approaching the point where two thirds of the population is covered by laws that may meet the criteria, I will rule on the individual laws. That currently is not the case.

Question: Each year about 9,000 Americans die in side-impact crashes. In 1979, NHTSA opened an advanced notice of proposed rulemaking to upgrade its side-impact standard. In July 1982, NHTSA terminated this rulemaking, noting that it wanted to do some research before continuing. Well over five years have passed. The Senate has passed legislation in 1986 and 1987 that would require a DOT rulemaking on improving side-impact. When will you act?

Answer: The Department is completing work on this rulemaking. Side-impact protection research has proven to be extremely complex. Measuring the impact of side-impact protection on injuries has required development of a new crash test dummy and measurement standards. In addition, some side-impact protection technologies which provide improved protection in low speed crashes are not effective in higher speed crashes, and vice-versa. It is very important to ensure that NHTSA issue a standard in which benefits derived from some types of crashes are not offset by disbenefits in other crash types.

Question: In February, I introduced legislation to require DOT rulemaking action on the application of a number of passenger car safety standards to small trucks and vans. These standards include standards on side-impact protection, roof crush resistance, head restraints, center high-mounted stoplamps, and, most importantly, passive restraints. The Senate passed a bill in April to require such rulemakings. When do you expect to act?

Answer: Standard No. 208, Occupant Crash Protection, currently does not apply to these vehicles the automatic occupant protection requirement which is being phased in for passenger cars. The Department feels it is necessary to allow the vehicle manufacturers to implement the automatic restraint requirement for passenger cars (including the development of passenger-side air bags). If additional passive restraint requirements were imposed now, they could interfere with the orderly implementation of the passenger car standard, since the manufacturers of the passenger car standard, since the manufacturers have a finite amount of manpower and resources to dedicate to passive restraint research and implementation.

Standard No. 216, Roof Crush Resistance, offers protection in rollover accidents. Accident data clearly show that light trucks, vans, and multipurpose passenger vehicles are involved in rollover accidents more frequently than passenger cars, but ejection appears to be the primary cause of injury. The manufacturers indicate that the roofs on most or all of their vehicles are strong enough to comply with the provisions of 216. NHTSA is continuing to investigate the potential safety benefits of roof crush performance requirements in conjunction with research on rollover accidents for light trucks.

Standard No. 202, Head Restraints, is being actively considered for these vehicles. However, the principal benefit of head restraints is to prevent whiplash and similar non-serious injuries; the devices are relatively ineffective in preventing serious injuries or fatalities. Currently NHTSA is examining state accident data to gain a further perspective on this issue. Every manufacturer of light trucks offers head restraints as optional or standard equipment on at least some trucks. NHTSA granted a petition on this subject in September 1987.

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Standard No. 108, Lamps, reflective devices, and associated equipment, is mentioned regarding the provision for center high-mounted stop lamps. NHTSA has under way a research activity, to be completed within 18 months, to develop prototype center high-mounted stop lamps for light trucks and to evaluate them under laboratory and controlled field conditions. From this research, the agency hopes to determine whether the benefits in preventing rear-end crashes into passenger cars would be applicable to light trucks, or whether the standard's requirements would have to be revised, given these vehicles' different rear-end configurations. A center lamp on a pick-up, for example, might be vulnerable to damage during the normal use of the vehicle.

Standard No. 214, Side Impact Protection. NHTSA is working on an ANPRM on side impact protection for head injuries, among other issues, which it anticipates issuing in the near future.

Rear Seat Belts

Question: The National Transportation Safety Board, leading safety groups and a parents' group have called for three point belts in the rear seats of cars. These belts offer better protection than lap belts. Last December, NHTSA told us it would finish a rule-making by the fall. In June, DOT issued an advanced notice of proposed rulemaking. When are you going to move forward?

Answer: Comments made in response to the advanced notice issued in June provided much information about the manufacturers' resource constraints, their costs of implementation and their future plans for installation of rear seat lap/shoulder belts. Several major manufacturers are planning to phase in rear lap/shoulder belts in their 1988 and 1989 models. NHTSA is currently reviewing the comments on the ANPRM and is in the process of deciding whether to issue a proposed rule.

NHTSA believes that the available data supports the effectiveness of lap belts. However, if the data indicates that rear seat lap and shoulder belts are needed, we will issue a proposed rule.

HEAVY TRUCK SAFETY RULEMAKING

QUESTION: In the Motor Carrier Safety Act of 1984, we required DOT to issue a number of heavy truck safety rulemakings. For example, you were supposed to develop an annual inspection program for trucks by January 1986. It has not been done. By October 31, 1985, you were supposed to have developed a system for rating the safety fitness of carriers. It has not been developed. When are these overdue rulemakings going to be completed?

ANSWER:

The annual safety inspection program requirement for heavy trucks involves a number of complex issues such as:

- What inspection standards should apply?
- Should there be a pre-approval requirement for inspectors and inspection facilities?
- How should state inspection programs be incorporated in the Federal requirement?

We published an advance notice of proposed rulemaking on this subject in 1985 and a notice of proposed rulemaking on February 26, 1987. The final rule has been drafted and I anticipate that it will be issued within 60 days.

The safety fitness rule has also been prepared. It was submitted to OMB within the past few days for clearance, as required by Executive Order 12291. I anticipate that it will be issued within 30 days.

DRUG TESTING

QUESTION: Former Secretary Dole was a champion of random drug and alcohol testing for critical transportation employees: a) how do you stand on the issue of random drug and alcohol testing? and b) will you proceed with DOT rulemaking that is currently underway in this important area?

ANSWER:

If confirmed, I would pursue the initiatives laid out by Secretary Dole for drug testing, including random drug testing, of transportation employees in safety-sensitive positions. The public is entitled to rely on a transportation system that is drug-free. There is no room for drugs in the transportation workplace, whether that workplace is the Department or one of the regulated industries. This would be one of my major priorities.

As you know, the Department's own drug testing program is in place and working. It has been upheld in the U.S. District Court, and it was permitted by Congress to proceed as an element of federal employee drug testing provisions set forth in the FY 1987 Supplemental Appropriations Act. We conform to draft HHS guidelines for the protection of those employees of the Department who are subject to testing, in particular random testing. The opportunity for rehabilitation is emphasized.

In the industries regulated by DOT, we are proceeding to prepare proposals for the imposition of drug testing programs, including random testing, and I certainly intend to pursue these rulemaking proposals.

Some testing requirements are also found in your Committee's bill S. 1041, now a part of pending airline consumer protection legislation (H.R. 3051) passed by the Senate. It would mandate alcohol and drug testing, including random testing, in the rail, motor carrier, and aviation (including FAA employees) industries. I strongly endorse the drug testing portion.

Motorcycle Safety Funding

QUESTION: About 4,700 people are killed in motorcycle crashes each year. That is more than 11 percent of all motor vehicle deaths. On October 8, I wrote you about placing a higher priority on grants to states for motorcycle safety projects. What are DOT's plans for increasing its motorcycle safety efforts?

ANSWER: The Department currently is considering the addition of motorcycle safety as a national priority area under the Section 402 program. We are examining responses to a proposed rulemaking published in September that invited comment on adding motorcycle safety to the six priority areas established in 1982. While motorcycle crashes were a major problem in several states when the 1982 priority areas were set, the emphasis was on highway safety programs that affected all states, such as alcohol counter-measures, safety belt use and emergency medical services. A final rule will be issued early next year.

Although motorcycle safety was not included as one of the national priority areas in 1982, we have made Section 402 funds available to states which have identified motorcycle safety as a major problem, under the same approval criteria as priority areas. In addition, we are continuing to encourage states to adopt comprehensive motorcycle safety programs, including user-financed rider education programs.

FAA PROCUREMENT

QUESTION: One of Secretary Dole's last official actions was to give the FAA authority to enter into procurements of $150 million or less without requiring final approval from DOT. Would you continue this policy?

ANSWER:

Yes. I was very deeply involved in the approval to delegate to FAA certain procurement actions on which I had previously been the decisionmaker.

The FAA Administrator's request for delegation of procurement authority represented the culmination of over a year of discussion with the Office of the Secretary (OST) on the optimum level of oversight and review. The Department's acquisition review and approval thresholds had not been changed since 1982. The revisions approved represent the maturity of Departmental acquisitions systems and the increased levels of FAA expertise and procurement professionalism. Recent assessments of the procurement operations and oversight capabilities of the FAA have shown that OST review--especially of smaller non-sensitive actions--is no longer necessary. Secretary Dole's delegation of acquisition authority represents a thoughtful and well-reasoned approach to the review and approval of Departmental acquisitions.

AIRLINE CONSUMER INITIATIVES

QUESTION: Both the Senate and the House of Representatives have made airline consumer issues major priorities this Congress. The Transportation Department (DOT) has also undertaken several initiatives aimed at remedying consumer problems, particularly flight delays. What additional measures, if any, should DOT take to improve conditions for airline passengers?

ANSWER:

Over the past several months, we have taken a number of important steps to improve conditions for airline passengers.

We have instituted a disclosure rule, consistent with the Committee's May 13 letter to Secretary Dole. Our initial report (November 10) provided valuable data to airline consumers, that was targeted to assist them in avoiding airline delays and other service problems. The rule requires the 14 largest airlines to report departure and arrival delays, monthly,at the 27 busiest airports. All 14 carriers have elected to provide delay information for their entire domestic systems. In addition, the rule requires these carriers to report on mishandled baggage. I believe the report was well received, will permit real competition among carriers on service quality, and will form the basis for even more precise comparative data next month, when individual flight performance will be available to consumers through computer reservation systems and airline reservation agents.

In recent months, we have also entered consent agreements with the major carriers serving four hub airports where delays were a significant problem. These agreements require more realistic scheduling and improved on-time performance. An investigation of four other hubs is nearing completion. The Department fined one of the country's largest carriers last summer for a variety of service problems and got it to agree to the hiring of new personnel as well as new training programs. We have just concluded a similar agreement with another major carrier. We also granted antitrust immunity to the major carriers last spring to permit them to agree on more than 1,000 schedule changes to reduce congestion at peak hours. The effects of these and other actions are becoming apparent as delays have declined substantially since July 1 and consumer complaints have dropped off for the first time in a year.

With respect to further actions we might take, the Department is not well equipped to establish requirements such minimum block times for specific flights or rigid capacity controls at most airports. Furthermore, I am concerned that artificial controls on capacity would run the risk of driving Americans of modest means, who did not have the resources to fly prior to deregulation, out of the market. We should exercise great care before imposing drastic measures, which may have unintended adverse effects, until we have an opportunity to assess the impact and effectiveness of the requirements recently imposed by DOT.

NATIONAL AIRSPACE SYSTEM (NAS) PLAN

QUESTION: The National Airspace System Plan (NAS PLAN), which outlines the Federal Aviation Administration's (FAA) major procurements for air traffic control and other systems, is over budget and behind schedule. Where do things stand, and what are your plans?

ANSWER:

I remain firmly committed to full implementation of the NAS Plan. This capital investment program takes the air traffic control system from vacuum tube to modern electronic technology, upgrading virtually all aspects of the air traffic control system and, through the implementation of some 90 projects, modernizing about 22,000 facilities that comprise the U.S. air traffic control system.

We are moving from the first stages of implementation, i.e., planning and contracting, to delivery and testing of equipment at field installations. The current 10-year (1982-1992) cost estimate remains at $12.2 billion. The second phase (1993-2001) is presently estimated to cost $3.6 billion, for a total cost of $15.8 billion.

While the NAS Plan is somewhat behind schedule, the achievements to date have been substantial. Fourteen percent of the NAS Plan projects are complete, and approximately 4,400 individual equipment components have already been delivered to the field. At the end of FY 1987, more than 85 percent of the NAS Plan programs were under contract for production.

The slippages that have been experienced are largely the result of the NAS Plan's combination of aggressive schedules and complex technology. Many of these advanced systems represent major procurements. One of the primary reasons for slippages has been difficulty in development of new software--a problem universally experienced throughout the Government and industry.

The Host computer project is proceeding extremely well, and all of the new computers should be delivered to their respective sites by the end of 1987 and be fully operational by late next spring. This in itself immediately upgrades the reliability, speed, and capacity of the computerized functions of the en-route segment of the air traffic control system.

The FAA is also improving and refining its control of the acquisition process. As an example, in the acquisition of one of the major components of the NAS Plan, the Advanced Automation System, the FAA will conduct extensive testing of each of the system's critical elements before full production begins. Extensive testing and certification is also required on other major projects before production decisions are made.

The NAS Plan represents a sizeable investment, but its implementation and successful completion will save taxpayers an estimated $24 billion in FAA operating and maintenance costs over the next three decades. In addition, another $41.8 billion will be saved by the aviation community in safety and efficiency benefits.

MOTOR CARRIER SAFETY

QUESTION: Secretary Dole supported increased funding for the motor carrier safety assistance program, even though the funding of other programs was proposed to be cut. Secretary Dole also supported the Commercial Drivers License. Will motor carrier safety continue to be the top priority of DOT?

ANSWER:

Motor carrier safety will certainly continue to be a top priority of the Department of Transportation. Specifically, I am fully committed to the Motor Carrier Safety Assistance Program (MCSAP), one of the most successful, visible programs we have in place today. As you may know, at present 47 states and 3 territories are now participating in MCSAP.

Before this program was implemented, the FHWA motor carrier specialists were conducting 36,000 motor carrier vehicle and driver inspections per year. However, under MCSAP, during Fiscal Year 1986 this federal/state partnership resulted in more than 500,000 inspections nationwide and removed more than 200,000 vehicles and 40,000 drivers from service for violations of the Federal Motor Carrier Safety Regulations.

I am also committed to the full and prompt implementation of the commercial drivers license program.

To date, the Department has met every deadline in the 1986 Act. On January 27, 1987, we issued a final regulation to require operable front brakes. On July 20, 1987, a final rule was issued to require drivers to be placed out-of-service for violation of the intoxicating beverage consumption rule. On March 23, 1987, an ANPRM which addressed the issue of blood alcohol level was published.

The fourth deadline was the final rule issued on June 1, 1987. In that rule, the FHWA amended the FMCSRs to require that operators of commercial motor vehicles possess only a single driver's license.

I will make it a top priority that we continue to successfully meet the remaining deadlines in the Act.

I will also press hard for completion of the very large complex assignments given to the Department by the 1984 Act.

COMMERCIAL DRIVERS LICENSE

QUESTION: The Federal Highway Administration (FHWA) is in the process of implementing the single, classified license for all commercial drivers. However, FHWA has indicated that it currently intends to use the social security number as the basis for identifying drivers rather than a unique identifier such as a retinal image or fingerprint. Given that multiple social security numbers can be obtained by one person, the social security number would not stop a bad driver from obtaining multiple license. Will you take a leadership role to ensure that a unique identifier is part of the commercial drivers license?

ANSWER:

Absolutely. In fact, the FHWA has already commenced activities in this area including 1) contracting with a firm to define the system requirements of biometric identifiers (its final report has just been submitted), and 2) approving a grant to the State of California to conduct a demonstration of the use of biometric or unique identifiers in a driver licensing application.

There are a number of complex issues that need resolution before we could impose a biometic identifier requirement. These include gaining acceptability by State Motor Vehicle Administrators and commercial motor vehicle operators and obtaining agreement between the unique identifier manufacturing industry and the States on data transfer and storage standards.

In the interim, the social security number will not be the only method of identifying drivers in the commercial driver's license information system (CDLIS). As the system is currently specified, the primary method of identifying drivers in the CDLIS will be an adaptation of the method that is used in the National Driver Register. This method is itself an adaptation of one which was originated in the State of New York and later used by the FBI.

Basically, the method attempts to match information about a license applicant with information already listed in the CDLIS. This is done by matching the applicant's name and reasonable variations of the name along with other physical attributes such as date of birth, sex, height and weight. This approach has proven to be very accurate in the past and should continue to serve well for an interim period while technical and administrative issues surrounding the use of biometric identifiers are resolved.

International Route Certificates

QUESTION:	I note that the Department of Transportation has adopted a policy with regard to the renewal of temporary international route certificates which gives significant weight to the right of an incumbent carrier to be retained on the route at issue, assuming the carrier has served the route well. Do you agree with that policy, and do you plan to continue it? What are your views on permanent international route certificates?
ANSWER:	I fully support that policy and plan to continue to adhere to it. Temporary experimental certificates, as opposed to permanent route authority, ensure that the needs of the market, as well as the quality of service being offered, are reviewed on a periodic basis. This type of authority also facilitates the ability of new carriers to enter limited designation international markets should a change in carriers be desirable. I believe that providing an incumbent carrier that has offered good service in a market with a rebuttable presumption in favor of the renewal of its authority strikes an effective balance between competitive benefits of a periodic review and the need for carriers to be able to take a long-term approach to the development and marketing of their international route authority.

POSTHEARING QUESTIONS OF SENATOR PRESSLER AND THE ANSWERS

Aviation Safety Regulations

Question: Within the past few months, two dreadful airplane accidents have occurred. I am extremely troubled by these incidents and think adjustments must be made to improve airline safety. We must do whatever is necessary to assure that our nation's skies are safe. I am pleased that this Committee has been holding a series of hearings on the Safety and Reregulation of the Airline Industry. Will you be proposing new regulations to improve airline safety, and, if so, what will you propose?

As you know, we have much uncontrolled airspace in our rural areas. Too often, I believe, safety concerns in these areas are overlooked. Do you have any suggestions on what can be done in this respect?

Answer: I am committed to pursuing a wide range of actions in the aviation safety area. A number of them are regulatory, involving initiation or completion of such rules as may be warranted in the areas of cabin safety; requirements for operating in congested terminal airspace; windshear avionics; collision avoidance systems; pilot qualifications and training and drug testing of industry employees in critical safety positions.

For "uncontrolled airspace" in rural areas, which involves low altitudes, the best remedy is better adherence to every pilot's responsibility to "see and avoid" other aircraft. Pilot education and constant reminders are the key to that, and FAA has pursued this concern in its "Back-to-Basics" and other programs.

QUESTION: Do you think that regional and short line sales have had a positive or negative effect on our transportation system?

ANSWER: The development of the regional and short line rail system in this country has had a positive effect on the transportation system. Short lines benefit shippers and communities by preserving service on light density lines that would otherwise be targets for abandonment. Often owned by local entrepreneurs, shortlines can market and price their product to preserve a transportation alternative for local shippers and thus directly benefit consumers. Class I railroads also benefit by being able to shed their least profitable lines without losing the tonnage that originates on these lines.

The very concept of the spinoff railroad emphasizes job preservation. Safety and efficiency benefit because the new owners make investments in these lines that the Class I's are rarely willing to make. The lines are better maintained in the hands of new owners than as unwanted appendages to a larger Class I system.

QUESTION: If labor protection provisions are applied to these sales, what do you perceive the effect to be?

ANSWER: It is essential to use labor protection guidelines that provide an incentive for carriers to preserve and transfer rather than simply abandon light density lines.

POSTHEARING QUESTIONS OF SENATOR KASTEN AND THE ANSWERS

QUESTION: Do you feel that the present computer reservation systems used by travel agents are competitive? Currently, two airline systems substantially dominate the market and have locked agents into contracts which will not expire until the 1990s.

ANSWER:

As you may know, the Department currently has these questions under study. That study which is being done at the request of the Congress should be completed by early next year. Although SABRE and APOLLO are still the largest systems, a Travel Weekly article in May indicated that the other three systems account for 39 percent of agency locations. The Department's rules prohibit contracts with terms longer than five years, so only contracts signed since 1985 will expire after 1990. The vendors have also announced their abandonment of "rollover" provisions, which automatically extended the contract term when new equipment was ordered. In addition, the liability of agents for liquidated damages on breach of contract has been actively litigated in a number of cases, while in others vendors seeking to convert agents have been willing to compensate them for liability to the original vendors. Consequently, I would regard it as premature to conclude that competition among CRS vendors is ineffective.

REBATING

QUESTION: Do you intend to enforce the provisions of the Federal Aviation Act and bilateral agreements which make it illegal to offer rebates on international tickets?

ANSWER: The prohibition on rebating is not based on FAA bilateral agreements. It is based primarily on Sec. 403 of the FAAct. We have followed the lead of the Civil Aeronautics Board and used discretion in enforcing this provision. We take enforcement action only where we have clear evidence of a pattern of direct consumer fraud or deception, of invidious discrimination or of violation of the antitrust laws. Our enforcement policy is public knowledge. We have received no airline or consumer complaints on this topic. This probably is because for consumers the practice of discounting benefits them through lower fares.

Rebating is a controversial practice which is practiced in international aviation markets throughout the world. Where our particular bilateral agreements provide for tariff filing and adherence to tariffs, periodically we have been requested to contact the carriers involved and assure that they are aware of their obligations under the agreement. For example, we recently directed Pan Am to cease discounting on certain tickets sold in Ireland.

We recently advised Cong. Mineta that we would welcome the opportunity to work with his committee to determine if changes to Sec. 403 are appropriate.

QUESTION: Presently, airlines are allowed to have liquidated damage provisions in their CRS contracts with travel agents, including loss of revenue the vendor carrier would have received from participating airlines during the length of the contracts, which is usually five years. These liquidated damages are not related to agents or airlines actual cost of operating the system. Onerous liquidated damage provisions make it virtually impossible for agents to switch to a better computer system, thus stifling competition and discouraging the development of more efficient systems. Would you recommend any rules which would prevent the inclusion of these provisions in computer reservations contracts?

ANSWER: Liquidated damage provisions in CRS contracts are one of the major issues being studied in our CRS investigation. One positive development recently is that CRS vendors have agreed to abandon the "rollover" provisions--automatic renewals of the five-year contract term when a travel agent's equipment is added to or modified. This makes the liquidated damages provision in the contracts less onerous. If our study indicates that additional action is needed, I will not hesitate to act.

QUESTION: Safety is of primary concern to the traveling public. Former Secretary Dole recommended the adoption of rules which would require carriers to report their on-time performance. Do you believe that these rules would help to improve on-time performance? Do you feel these rules would, in any way, threaten the safety of our air transportation system?

ANSWER: The final rule requiring the carriers to report on-time performance and mishandled baggage data to the Department and to provide that data to the public through computer reservations and carrier ticket agents was published on September 9, 1987. The first data from the rule was released on November 10. The latest data on delays, both as recorded by the FAA and from our scheduling practices investigation, indicate that delays are substantially lower over the last four months. I am sure that the disclosure rule contributed substantially to that improvement by focusing the attention of the carriers on practices that were exacerbating the delay problem and causing them to reexamine and correct many of those practices. Over the next several months I expect to see further reductions in delays as the carriers take additional corrective measures in response to the publication of the performance data. With respect to safety impacts, the rule was carefully strucutred to avoid any deleterious effects by allowing the airlines to delete delays that were caused by mechanical problems, thereby avoiding any incentive to fly with mechanical problems in order to improve on-time performance. I will be vigilant in overseeing continuing implementation of the rule to assure that it has no adverse impact on safety.

FAA Structure

Question: Some Congressional leaders have suggested that the Federal Aviation Administration should be separated from the Department of Transportation and removed from any politics as was done with the Civil Aeronautics Board. Do you believe this should be done and what is your justification for your response?

Answer: The Senators and Committees with an interest in this matter are to be commended for bringing the FAA organizational issue to the forefront.

There are benefits and costs associated with any restructuring. Each proposal needs to be carefully evaluated to determine whether it would, ultimately improve aviation safety and airline service. I intend to work with Congress, the FAA and the aviation community to explore all reasonable options to assure that the FAA is able to carry out effectively its responsiblities.

Improvements to Airports and ATC

Question: Our air traffic control system is reportedly in need of great improvements. What steps would you take to improve air traffic control and airport development?

Answer: The National Airspace System Plan is providing, and will continue to provide, needed improvements in the air traffic control and air navigation system. In addition, we will not hesitate to request additional air traffic controllers from the Congress as needed. I also support Administrator McArtor's efforts to improve controller recruitment, hiring, training, and retention.

We will continue to work with airport proprietors and interested local governments on proposals to expand the current airport system. At the same time, it is important to work for suitable levels of Federal funding for eligible airports around the country.

Additionally, I intend, to work with Congress, the FAA and the aviation community to explore all reasonable options to assure that the FAA is able to carry out effectively its responsibilities.

QUESTION: What steps can the DOT take to insure the safety and well being of rail passengers?

ANSWER: Note at the onset that railroad safety has improved dramatically during the last seven years, and passenger safety is no exception. The accident rate in the industry has dropped by more than 60% in the last decade. 1986 was the best the industry has had in terms of numbers of accidents. In the first eight months of 1987 it appears that the accident rate will fall even lower than 1986. However, we are not satisfied with these numbers and are taking a number of specific steps to assure the continuance of this forward trend.

Recently the Department has ordered Automatic Train Control installed on all trains operating in the Northeast Corridor between Boston and Washington. ATC will slow and stop trains safely if a locomotive engineer fails to respond to a signal that instructs the engineer to slow or stop the train.

A legislative proposal that would give the Federal Railroad Administration jurisdiction over railroad employees, thus allowing the agency to directly discipline employees who willfully violate safety regulations, has passed the Senate and awaits House of Representatives action.

In addition, random drug testing of employees in safety sensitive railroad positions, combined with the Federal Railroad Administration's current alcohol and drug rules, should effectively remove employees with an alcohol and drug problem from train operations.

FRA is working with Amtrak on passenger car interiors so passengers, luggage and the cars themselves can better withstand accidents if they do occur.

FRA's Office of Safety annually conducts a safety assessment of one rail commuter authority. These safety assessments involve a top to bottom audit of the railroad's operations and safety programs. Recent assessments have been completed on Southeastern Pennsylvania Transportation Authority commuter lines and on Metro North Commuter Railroad. New Jersey Transit will be the next commuter authority being assessed.

QUESTION: Congress requested on July 30, 1986, that the DOT complete a study on how it would handle the default of a major air carrier. To date, this study has not been released. Would you use the power of your office to obtain a release of this study? Do you feel there should be an airline default protection program?

ANSWER:

Our study on the need for a default protection plan is nearing completion. We expect to have the results available for discuss with you, Congressman Boehlert, and other interested parties early next year. Until our study is completed, it would be premature to take a position on whether there should be a default protection program.

QUESTION: Currently, the Aviation Trust Fund contains some 5.6 billion dollars which passengers and other users have paid into it. We are all keenly aware of the need to improve our traffic control equipment and our airport facilities. Do you feel this fund should be taken off-budget so the money can be spent for the reason it is collected, namely, "to improve the aviation system."

ANSWER: The most important issue is to be sure that we have adequate resources for FAA. The large surplus in the Aviation Trust Fund leads some to believe that we have been spending less on critical FAA activities than aviation users have been paying into the Trust Fund. That is not the case, however. Over the past six years, almost $27 billion has been made available for FAA programs, but only $15.2 billion has come from the Trust Fund. The difference — some $11.5 billion — has come from general tax revenues. We have been spending much more on FAA than aviation users have been paying, but, because of an accounting issue, we have been spending from general Treasury funds. Taking the Trust Fund off budget would not significantly affect the split between Trust Fund and general Treasury support of FAA, and would do little to reduce the surplus in the Trust Fund. Critical spending priorities can be met "on budget," as the President and the Congress have demonstrated by providing for an increase in FAA's budget of over 50 percent from 1982 to 1987 and an increase of 20 percent or more from 1987 to 1988. I do not believe the Trust Fund should be taken off budget, but I do fully support use of Trust Fund resources to fund FAA programs to the maximum extent.

QUESTION: On September 17, 1987, ASTA filed a petition with the DOT regarding minimum contract terms for contracts by which travel agents lease computerized reservation systems (CRSs) from airlines and other vendors. When do you anticipate a rulemaking on this most important issue?

ANSWER:

This issue is an important element of our ongoing CRS investigation. At this time, we do not anticipate making a decision on the need for a rulemaking until the CRS investigation is completed.

POSTHEARING QUESTIONS OF SENATOR McCAIN AND THE ANSWERS

1. Some time ago the Mohave County Airport Authority filed an application with the FAA for an IFR airspace designation and airport improvement funds for the expansion of the Bullhead-Laughlin Airport in Bullhead City, Arizona. Recently, both the House and the Senate included language in the Department's FY 1988 Appropriation which requires that the Department give priority consideration to grant applications involving the expansion of this facility. Please tell me how you intend to respond to this Congressional directive.

As a matter of policy, the Department will be responsive to Congressional direction on Bullhead City. In this case, the FAA has not yet taken a position on the Bullhead City grant application, but we have every intention of giving full consideration to the Bullhead City application after a complete examination of various factors, such as cost, environmental, engineering, and airspace management.

2. Please provide me with a list of applications on file with the FAA for the construction of an airport near Laughlin, Nevada. How many of these applications were filed by public agencies?

The Mohave County Airport Authority has filed a preapplication for $23 million for the construction of a runway. They are the only public agency with an application filed, but further applications could be expected once the site selection process is completed.

3. Have any site selection studies for the Bullhead City-Laughlin area which have been funded by FAA funds shown that the existing Bullhead-Laughlin Airport cannot be expanded to serve as an adequate air carrier facility for the region?

You are correct in stating that there are no studies that conclude that the Bullhead-Laughlin Airport cannot be expanded to serve as an adequate air carrier facility for the region.

4. As you may be aware, consultants for Clark County, Nevada, Department of Aviation recently completed a site selection study for the Bullhead-Laughlin area. The objectivity of this analysis as well as its conclusions have come under severe criticism. A dissenting report to this study has been filed with FAA. Please tell me how much weight you intend to give the Clark County study in light of the serious deficiencies which have been pointed out with it and the clear expression of Congressional intent which has been expressed on the subject.

Consistent with our obligation to provide an objective study of the sites under consideration, we will review all study results available to ensure that the airspace management impacts, engineering and technical data, and environmental factors are properly weighed in an unbiased manner.

5. The Clark County study recommended the development of an airport at a site southwest of Laughlin, Nevada. I am told that the development of an airport at that location would subject the residents of some of the finest residential areas of Bullhead City to severe airport noise. Is this true?

We have not completed an environmental review of the proposed sites and are unable to determine the severity of the noise on the residental areas of Bullhead City. If an area is severely impacted by noise, that finding will be a consideration in final site selection.

6. Is it true that the Clark County study stated that the existing Bullhead-Laughlin Airport could be expanded to serve as a safe and adequate air carrier facility for the area?

Yes, the study showed that the existing Bullhead-Laughlin Airport could be expanded to serve as a safe and adequate air carrier facility for the area.

STATEMENT OF
DELTA AIR LINES
ON THE
SENATE COMMERCE, SCIENCE & TRANSPORTATION COMMITTEE
HEARING ON THE NOMINATION OF
JAMES H. BURNLEY IV
FOR
SECRETARY OF TRANSPORTATION

Mr. Chairman and Members of the Committee. Delta appreciates the opportunity to provide its views on the nomination of James H. Burnley IV to serve as Secretary of the Department of Transportation. Delta applauds the Committee for holding this hearing and moving expeditiously to consider this nomination so that this vacated post can be filled as quickly as possible to provide continuity and expertise at the highest level.

Delta supports the Administration's nomination of James Burnley to serve as Secretary of Transportation. Mr. Burnley is highly qualified for this position and we see no reason why he should not be confirmed as Secretary. During his tenure as Deputy Secretary of DOT, Mr. Burnley has shown himself to be very knowledgeable and well informed on a variety of aviation issues which have confronted the Department of Transportation. He has provided effective and able leadership in articulating and implementing the policy initiatives advanced by former Secretary Dole.

Mr. Chairman, Jim Burnley has endeavored to maintain a positive working relationship with Delta and the industry, and we are confident that recent efforts to improve communications with us concerning issues that affect Delta and our industry will be strengthened in the future. While Delta has had some differences of opinion with regard to certain policies advanced by the Department in the past year, we have found Jim Burnley willing to meet with company officials to discuss our concerns.

As this Committee is well aware, there are a number of very important issues facing the aviation industry. The Department of Transportation has taken a number of steps to address these problems both in the form of regulatory and policy actions. It is imperative, in our judgment, that the next Secretary be well familiar with the issues and problems facing the aviation industry during this critical period. His experience should prove invaluable during the coming months as we work together to improve upon the world's finest air transportation system.

Mr. Chairman and Members of the Committee, Delta urges you to vote in support of the confirmation of James Burnley as Secretary of the Department of Transportation.

STATEMENT BEFORE THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION IN SUPPORT OF THE NOMINATION OF JAMES BURNLEY AS SECRETARY OF TRANSPORTATION

November 17, 1987

The undersigned parties support the prompt confirmation of James H. Burnley, IV to be Secretary of Transportation. Each of us deals with the Department of Transportation. It is an important agency that is crucial to both the safety and well being of the American public as well as the nation's economy.

Safe and efficient transportation is a goal that we all support. Strong and effective leadership at DOT is needed to achieve this goal. We believe that Jim Burnley will provide such leadership.

The term of the next Secretary will be very short. There is no time to learn on the job. The continuity that Jim Burnley brings to the job is an important reason for our support.

In our dealings with him, in his position as Deputy Secretary, Mr. Burnley has always been accessible, knowledgeable, open-minded, and willing to take on difficult tasks. We are confident that he will extend these qualities to his position as Secretary.

We urge prompt action on this nomination so that the important business of the Department of Transportation can continue without delay.

Respectfully submitted,

American Airlines
Americans For Safe & Competitive Trucking
Association of American Railroads
ATE Management & Service Company, Inc.
Automotive Service Industry Association
Carnation Company
Citizens for a Sound Economy
CSX Corporation
Figgie International, Inc.
Food Marketing Institute
Interstate Natural Gas Association of America
NASSTRAC
National American Wholesale Grocers' Association
National Association of Wholesaler-Distributors
National Industrial Transportation League
Nestle Enterprises, Inc.
Norfolk Southern Corporation
Private Truck Council of America
Procter & Gamble
RBC Associates
Ryder System Inc.
Sears, Roebuck, & Company
Johnson & Johnson Hospital Services
Weyerhaeuser Company

Statement of Drew Lewis,
Chairman, President and Chief Executive Officer of
Union Pacific Corporation
in Support of the Nomination of James H. Burnley IV
as Secretary of Transportation
U.S. Senate Commerce Committee
November 17, 1987

Mr. Chairman, I am pleased to have the opportunity to strongly endorse the nomination of James H. Burnley IV as Secretary of the U.S. Department of Transportation. Mr. Burnley is an outstanding nominee who will make an excellent Secretary. I commend President Reagan for his choice and I strongly urge the Senate to confirm Mr. Burnley.

During the Reagan Administration's tenure, the Department of Transportation has sought to rebuild our nation's transportation infrastructure, reduce the overwhelming burden of Federal regulations on the industry, return greater responsibilities to the states, and enhance the safe movement of people and goods.

During my years at DoT, and more recently under the leadership of Elizabeth H. Dole, real progress has been made in these areas. In cooperation with the Congress, we were able to put into place the funding mechanism needed to rehabilitate and expand our nation's highway and mass transit systems. Together, we were successful in providing additional resources for the safe and efficient operation of our aviation system. In concert with the Senate Commerce Committee, we enacted legislation to deregulate the intercity bus industry and successfully fought off efforts to reregulate the rail industry.

In addition, over the past few years, tremendous progress has been made in reducing highway traffic injuries and fatalities. At the state level, action has been taken to clamp down on drunk driving and to increase the use of safety belts.

All of these developments have contributed to a better transportation system for the American people. Much of the credit belongs to President Reagan and the Congress, but the Department of Transportation is also largely responsible for this progress. Secretary Dole and Deputy Secretary Burnley have provided the initiative and leadership on many of these issues. Without their work, the progress made to date on this ambitious agenda would not have been possible.

While much has been accomplished, much more needs to be done. Consumer confidence in the aviation industry's ability to provide safe, reliable service needs to be bolstered. Continued efforts to turn back the clock on rail deregulation must be defeated. And the persistent budget questions have to be addressed in a way that balances the need to reduce the Federal deficit while fulfilling the mandates of Congress.

Jim Burnley's experience with these issues over the past four years makes him well qualified to serve as Secretary. He has the substantive knowledge on all of these issues, the experience of being at the center of every major transportation debate, and the ability to work with divergent interests toward the formation of rational public policy.

In addition, he will provide the continuity of leadership the agency needs through the last fifteen months of this Administration. Because of the importance of the issues before it, the Department will be very well served by a Secretary who not only already has firsthand knowledge of the issues but who also knows the inner workings of the agency. Jim has the reputation of being a capable administrator who enjoys the respect and loyalty of the career establishment at DoT. As such, his presence will ensure a smooth transition for the Department.

In addition to these important qualifications, one of Mr. Burnley's greatest strengths is his ability to work effectively within the executive branch. Every Cabinet Secretary must be able to advocate his policies to the various constituencies in the executive branch. Jim knows this process as well as anyone and understands that ultimate success with the Congress is first dependent upon building a strong base of support in the executive branch. As Deputy Secretary, Jim successfully carried out this role. His work within the cabinet councils and with the Office of Management and Budget has helped shape the Administration's policies on all transportation issues. In short, he knows the workings of government, understands the importance of working within that system, and is very effective at promoting an idea and building support for it.

As a former Secretary of Transportation, I am familiar with the qualities needed to successfully carry out the duties at the Department. Jim Burnley has all of those qualities. His confirmation by the Senate will provide for a strong advocate of the Administration's policies, a person who has the substantive knowledge of the issues, and one who knows the workings of government.

I strongly recommend that the Senate confirm Mr. Burnley as the next Secretary of the U.S. Department of Transportation.

EMERY
WORLDWIDE

John C. Emery, Jr.
Chairman and
Chief Executive Officer

Executive Offices
Wilton, Connecticut 06897
203 834 3321

'87 NOV 20 PM 6 45
November 19, 1987

VIA EMERY URGENT LETTER

Senator Ernest F. Hollings
Chairman
Senate Commerce Committee
125 Russell Building
First and C Street, N.E.
Washington, DC 20510

Dear Chairman Hollings:

In a personal as well as a corporate sense, I was distressed when Secretary Elizabeth Dole chose to resign her position as Secretary of Transportation in order to support the candidacy of her husband, Robert Dole. Secretary Dole had been most helpful in enabling Emery to secure some important air freight forwarder charter authorities to operate our service from Japan, and we are indebted to her for the DOT's initiative in our behalf, which was also well supported by Jim Burnley and Matt Scocozza.

Now that President Reagan has nominated James R. Burnley, IV as our future Secretary of Transportation, I simply wanted to add my strong support for his candidacy as a real DOT professional, one whose background of experience and ability to comprehend the most complex issues add up to reinforcing the importance of Mr. Burnley's nomination.

In the important role you occupy as Chairman of the Senate Commerce Committee, I look forward to following the outcome of your hearings on Jim Burnley and sincerely hope you concur with my high opinion of the former Deputy Secretary of Transportation.

With thanks for your consideration and with kind regards.

Cordially,

John Emery

John C. Emery, Jr.

JCEjr/kaf

STATEMENT OF NORTH AMERICAN TRANSPORTATION CONSULTANTS, INC.

I wish to thank Chairman Ernest F. Hollings, the Commerce Committee and Senator Lautenberg for this opportunity to present testimony in the matter of the nomination of Mr. James H. Burnley IV to be Secretary of Transportation.

I worked for the U.S. Department of Transportation as a Special Agent with the Federal Highway Administration until November of 1985. During this period I had the opportunity to meet and discuss policy and implementation problems with, at the time, Deputy Secretary James H. Burnley IV. The areas of our discussions centered on the need to improve implementation of the regulations contained within 49 CFR. Mr. Burnley appeared to be very interested in the problems facing the field staff as they attempted to implement the policies established in Washington. As a field agent I had first hand knowledge of the effectiveness of those policies during this period.

Mr. Burnley was very concerned about the problems facing the highway enforcement personnel. Since, thousands of people are killed and many more are injured annually, in accidents involving commercial vehicles, on the nation's highways he felt that action was overdo in this area. With less than 125 active field agents throughout the country, at the time, it seemed impossible for them to insure safety in the highway mode of the transportation industry. Mr. Burnley asked numerous questions concerning the effectiveness of current programs, my impressions of how the system was working and if I had possible solutions or recommendations. He displayed a quick understanding of the problems that existed and solutions necessary to improve the system. The possible solutions discussed included the newly created Motor Carrier Safety Assistance Program (MCSAP). The question of enforcement venue and location of violation were discussed with respect to the MCSAP enforcement actions. Morale of the field staff was covered in detail. Mr. Burnley was very interested in the level of morale. He felt that regardless of how good a program was if those that implemented it were unmotivated its effectiveness would be diminished. I left that meeting with a strong conviction that the proper attention would be given to the highway mode problems.

Shortly thereafter, Secretary of Transportation Elizabeth Dole announced that insuring air safety was the nations highest priority. The highway field staff became more overworked and morale took a turn for the worse. I met Mr. Burnley approximently 6 months after our first meeting and informed him that I was going to resign and explained my reasons. I was pleasantly surprised when Deputy Secretary Burnley spent over twenty (20) minutes talking me out of resigning. He felt that it was very important at the time, to remain on the job and assist the Department in its efforts to improve highway safety. The personal concern shown by Mr. Burnley demonstrated to me that he had very strong convictions concerning highway safety. Very few appointees at his level would have cared if a field employee resigned or stayed for life. With tens of thousands of employees throughout the world, here was the number two person at the Department doing what he could to insure that one experienced field agent remained on the job. That to me was the strongest sign of commitment I had seen since I left the Marine Corps.

Approximently seven (7) months later I did finally resign from the U.S. Department of Transportation for personal reasons. Since leaving the DOT I have spent close to 30 percent of my time developing training programs for state enforcement personnel and providing this training. A large portion of my state training is provided to assist them in their attempt at uniformity. Last month my company and F.L.I. Learning Systems, Inc. donated training programs. Most of what I and my company do for national highway enforcement stems from the conversations that Mr. Burnley and I had. As stated earlier these conversations centered on the need to improve the implementation of national programs and the contribution one can make to the system.

It is with the strongest conviction that I support the nomination of Mr. James H. Burnley IV to become the next Secretary of Transportation. He is a man of strong character and leadership qualities. He has demonstrated his conviction for improved safety and has a thorough understanding of the pressing issues before the national transportation system. I urge your rapid conformation of Mr. James H. Burnley IV.

I wish to once again thank you personally Chairman Hollings and the Commerce Committee for its time and consideration in this matter of national importance.

ELIZABETH HANFORD DOLE
WASHINGTON

November 16, 1987

The Honorable Ernest F. Hollings
Chairman, Committee on Commerce
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

I am writing in strong support of the nomination of Jim Burnley to succeed me as Secretary of Transportation.

President Reagan's nomination of Jim does more than recognize the extraordinary contributions that Jim has already made toward improving the safety of our transportation system. His nomination assures leadership in dealing effectively with the transportation challenges that we will face in the future.

I was privileged to have Jim's assistance during virtually the entire period that I served as Secretary, starting with his appointment as General Counsel of the department in 1983 and then his appointment later that year as Deputy Secretary. During those four and a half years we worked together as a team in dealing with the major issues in every mode of transportation.

In transportation, the Secretary is responsible for a broad grouping of dynamic services and functions. As a result, the new Secretary does not inherit a settled status quo, and he certainly will have to deal with new challenges. These circumstances best suit Jim Burnley, for he brings to his new position vast experience coupled with a sincere dedication to improving our nation's transportation system.

I also commend to this Committee Jim's ability and commitment to working productively with the Congress. This Committee has an outstanding legislative record on transportation issues, and I am proud that Jim and I have been able to work with the members in fashioning accomplishments such as the sale of Conrail and two landmark motor carrier safety bills. I am sure that Jim will consult closely with you as he formulates his agenda and moves his proposals forward for consideration by the Congress.

Jim Burnley is a man of integrity and he has not shied away from tough assignments and from making hard decisions. I believe that he deserves to be confirmed as the nation's ninth Secretary of Transportation.

With warm regard,

Sincerely,

Elizabeth Dole

Elizabeth Dole

PAN AM.

Richard D. Mathias
Senior Vice President
Government Affairs

November 16, 1987

The Honorable Ernest F. Hollings
Chairman
Committee on Commerce, Science & Transportation
United States Senate
125 Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

Soon you will be voting on the nomination of James Burnley as Secretary of Transportation. His past service as the Deputy Secretary has provided him the background and credentials to serve the Department well as Secretary and Pan Am urges his nomination be acted upon swiftly and favorably. At this time, maintaining a continuity in the management of DOT is an all-important consideration.

Sincerely,

Richard D Mathias

Chairman DENVER COLLINS, JR., Senior Vice Chairman DANIEL J. SPIGAI
Treasurer EUGENE M. JOHNSON, President and Secretary DANIEL J. HANSON, SR.
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ROBERT S. O'NEIL, W. B. PATTERSON, WILLIAM F. REBONE, EUGENE [illegible] WILSON

ARTBA
American Road & Transportation Builders Association

November 13, 1987

The Honorable Ernest F. Hollings
Chairman
U. S. Senate Commerce, Science &
Transportation Committee
Washington, DC 20510

Dear Senator Hollings:

It is our understanding, that the Senate confirmation hearing for James H. Burnley IV to become Secretary of the U. S. Department of Transportation will be held next Tuesday, November 17, 1987. It is further noted, that as Chairman of the U. S. Senate Commerce, Science & Transportation Committee, you will be presiding at this hearing.

Let the record show that I have personally known Jim Burnley since he joined the U. S. Department in the early 1980's. He has worked with the American Road and Transportation Builders Association in many cooperative activities over the years.

ARTBA looks forward to working with Jim Burnley in his new capacity as Secretary of Transportation. We endorse his confirmation by your committee and the entire U. S. Senate as soon as possible.

Respectfully submitted,

Daniel J. Hanson, Sr.

Daniel J. Hanson, Sr.
ARTBA President

Heron, Burchette, Ruckert & Rothwell

Suite 700
1025 Thomas Jefferson Street, N.W.
Washington, D.C. 20007

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Suite 1150
770 L Street
Sacramento, CA 95814
(916) 446-1428

1400 MBank Tower
221 West Sixth Street
Austin, TX 78701
(512) 499-0806

November 12, 1987

HAND DELIVERED

Senator Ernest F. Hollings, Chairman
Committee on Comerce, Science and Transportation
SD-508 Dirkson Senate Office Building
Washington, D.C. 20521

Dear Mr. Chairman:

We represent the National Business Aircraft Association. That organization represents some 3,000 corporations which operate aircraft in support of our nation's economy. Your Committee recently announced its intention to hold hearings on the nomination of James H. Burnley IV to be Secretary of Transportation.

On behalf of the National Business Aircraft Association we would like to express our confidence in Mr. Burnley's ability to perform this important function and to address the critical issues facing the aviation system. We look forward to working with Mr. Burnley in his new role as Secretary of Transportation.

Sincerely,

J. E. Murdock III

JOHN L. BAKER
AOPA
421 AVIATION WAY
FREDERICK, MARYLAND 21701

November 16, 1987

Senator Ernest F. Hollings
125 Senate Russell Office Building
Constitution and Delaware Avenues, NE
Washington, DC 20510

Mr. Chairman:

Inasmuch as we have received a number of inquiries regarding the Aircraft Owners and Pilots Association's position on the nomination of Mr. James Burnley as Secretary of Transportation, we would like to supply our endorsement for the record.

It is our belief that the general state of disrepair of the air transportation system in this country is of major national concern. We also believe that strong leadership and continuity of direction at the Department of Transportation is vital to successfully addressing these problems.

We have had occasion recently to have a number of dialogues with the Acting Secretary. It has been our experience that he is knowledgeable, decisive, accessible and has an understanding of the importance of aviation, both airline and general aviation, to the national interest. He also has a reputation for integrity and commitment.

We urge the Committee and the Senate to move forward with this nomination with all dispatch and that Mr. Burnley be confirmed.

Sincerely,

John L. Baker
President

lce

Helicopter
Association
International

1619 Duke Street, Alexandria, Virginia 22314-3406 Telephone 703/683-4646 Telex 89-615

November 17, 1987

The Honorable
Ernest F. Hollings
Chairman, Committee on Commerce,
  Science and Transportation
Senate Dirksen Office Building, Rm. 358
Washington, D.C. 20510-6125

Dear Senator Hollings:

Re: Confirmation of the Appointment of Mr. James H. Burnley, IV
as Secretary of Transportation

The Helicopter Association International (HAI) supports the appointment of Mr. James H. Burnley, IV as Secretary of Transportation. Although we do not know Mr. Burnley's specific views and attitudes, we believe that he sees the importance of developing a system of properly located heliports/vertiports with supporting airspace and navigation aids. Mr. Burnley's insight and experience enables him to perceive that such a system integrated with the present airport, airspace and navigation system, would ease the present capacity problem at major cities as well as provide direct downtown to downtown air transport for the general public.

Irrespective of his philosophy toward such a vertiflight system, Mr. Burnley receives HAI support for other practical reasons. There remains only one year under the present administration. At this time there are many unfinished programs affecting air safety, including those before the U.S. Congress, that the HAI would like to see completed. We believe that the aviation community will benefit from these programs and that Mr. Burnley is sufficiently familiar with them to keep these programs moving. Alternatively, a new Secretary of Transportation, unfamiliar with these issues, will necessarily require time for self-education and some of the present aviation programs may suffer. Further, Mr. Burnley, during his years as the Deputy Secretary of Transportation, has firmly established his excellent qualifications for this vital cabinet position.

Sincerely,

Frank L. Jensen, Jr.
President, HAI

FLJ:gws

cc. Mr. James Burnley gws3a.burnley.j

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November 16, 1987

The Honorable Ernest F. Hollings
Chairman, Committee on Commerce, Science, and
Transportation
United States Senate
Washington, D.C. 20510

Dear Chairman Hollings:

On November 17, 1987, your Committee will begin confirmation hearings of the President's nominee to become Secretary of Transportation, James H. Burnley, IV. As a trade association representing 8,000 general contractors nationally and an association vitally interested in national transportation policy, the Associated General Contractors of America (AGC) wholeheartedly supports Mr. Burnley's nomination to the position.

As Deputy Secretary of the Department, AGC believes that Mr. Burnley is in a unique position to assume the duties of Secretary of Transportation. Over the past 4 years, he has been a central figure in the development and implementation of the nation's transportation policy and has been responsible for the day to day operation of the Department. As Secretary, his grasp of the current issues facing the Department, his rapport with the Department of Transportation organization, and his stature within the transportation industry will assure the leadership necessary to manage the Department in the coming months.

AGC appreciates the early action your Committee is taking on this nomination and we look forward to a speedy confirmation process. As an expression of our support, we would appreciate inclusion of this letter in the confirmation hearing record.

Sincerely,

Dana Huestis
President

DH/dl

PRIVATE TRUCK COUNCIL of AMERICA, Inc.

2022 P STREET, N.W., WASHINGTON, D.C. 20036
202/785-4900

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Richard P. Schweitzer, *Legislative Counsel*

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Ryder Truck Rental, Inc. Miami, FL
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E Transport, Inc. Danvers, MA
L. WIERINGA
General Motors Corp. Detroit, MI
*D.A. WILSON
The Southland Corp. Addison, TX

*Past President

1987 NOV 16 PM 4:44

November 16, 1987

The Honorable Ernest F. Hollings
United States Senate
SR-125 Russell Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Hollings:

The Private Truck Council of America, Inc. strongly supports the prompt confirmation of James H. Burnley IV as Secretary of Transportation.

In his tenure as Deputy Secretary, Mr. Burnley has developed first hand knowledge of the programs and priorities of the department. He has also established a reputation as an effective leader and "no nonsense" administrator.

With only little over a year left in this term, the next Secretary of Transportation must be someone already familiar with the departments day-to-day operations. Mr. Burnley offers exactly that continuity.

In the next year the trucking industry must face key issues involving drug testing, new equipment regulations, driver licensing and testing rules, safety fitness criteria, access for vehicles under the Surface Transportation Assistance Act of 1988, and consideration of a federal weight-distance tax for trucks. PTCA is confident that Mr. Burnley will deal fairly with the industry while protecting the public interest.

Our 1500 member companies urge you to expedite the confirmation so that these issues may be addressed without delay.

Sincerely,

Richard D Henderson

Richard D. Henderson
Executive Vice President

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Edward J. Hogan
Chief of Police
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Parliamentarian
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Farmingdale, NY

Immediate Past President
John J. Norton
San Francisco, CA

Jerald R. Vaughn
Executive Director

October 13, 1987

Senator Ernest F. Hollings, Chairman
Senate Committee on Commerce, Science, and Transporation
508 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Hollings:

The International Association of Chiefs of Police strongly supports the nomination of James H. Burnley IV as Secretary of Transportation. Through the years, we have pursued many public safety initiatives in conjunction with the Department. We have developed a very close and mutually beneficial working relationship with DOT. We feel that Mr. Burnley's appointment will benefit not only the transportation community, but highway safety advocates also and the citizens of this country. We urge you to support him during his confirmation hearing.

Mr. Burnley has been involved in many of the major safety initiatives within the Department during his tenure. He has been a vocal advocate of federal funding under the State and Community Highway Safety Grant Program administered by the National Highway Traffic Safety Administration and the Federal Highway Administration. These programs have greatly aided state and local highway safety efforts. He has also strongly promoted safety belt usage and anti-drunk driving, all initiatives of great importance to the law enforcement community. We feel that it is imperative to continue these programs. Mr. Burnley knows the issues, understands law enforcement's perspective, and is committed to finding solutions. We think he is the best qualified person to continue the work of the Department at the present time.

As Deputy Secretary of DOT since 1983, Mr. Burnley has been in charge of the department's day-to-day operations. Since Oct. 1, 1987, he has been Acting Secretary. We feel that this gives him the expertise and experience to promote continuity within the Department. Mr. Burnley will not have to learn the job. The Department can continue with a modicum of transitional adjustments in this most critical of times. Please join us in supporting the nomination of James H. Burnley IV as Secretary of the Department of Transportation.

Sincerely,

Jerald R. Vaughn

Jerald R. Vaughn
Executive Director

'87 OCT 14 AM 11:53

United States Merchant Marine Academy
Alumni Association, Inc.
Kings Point, New York 11024

5357 37th Street North
Arlington, Virginia 22207
9 October 1987

The Honorable Ernest F. Hollings
Chairman, Committee on Commerce, Science, and Transportation
United States Senate
508 Dirksen Senate Building
Washington, D.C. 20510

Dear Mr. Chairman:

The purpose of this letter is to express support for James H. Burnley IV, President Reagan's nominee to be the next Secretary of Transportation.

The approximately 17,000 alumni of the United States Merchant Marine Academy have a vital concern for the leadership of the Department of Transportation. We know that you, as a current member of the Congressional Board of Visitors and as one long familiar with the exceptionally high quality of our school, have a special appreciation for the contributions made by our graduates in both peace and war which legitimize our continuing interest in efficient U.S. commercial intermodal transportation capabilities and our Nation's readiness to provide integrated military logistical support in time of National emergency.

We believe that Mr. Burnley is an especially suitable choice at this time and respectfully urge his prompt confirmation.

Sincerely yours,

R. H. SCARBOROUGH
Vice Admiral, U.S. Coast Guard (Ret.)
Chairman, Governmental Affairs Committee

Becky

NATIONAL PRIVATE TRUCKING ASSOCIATION
SUITE 720, 1320 BRADDOCK PLACE, ALEXANDRIA, VA 22314 (703) 683-1300

87 OCT 19 PM 2:00

October 12, 1987

Honorable Ernest F. Hollings
Chairman
Commerce, Science & Trans. Committee
United States Senate
Washington, D.C. 20510

Dear Senator Hollings:

I am writing you today to request you act favorably on the nomination of James Burnley as Secretary of Transportation.

During his four-year tenure as deputy secretary of transportation, Mr. Burnley has proven himself a knowledgeable and capable leader as well as an effective administrator. In addition, he has been accessible and forthright in his relationship with NPTA and its members.

He would bring a consistency and a continuity to the job that the nation's private fleets would appreciate.

I look forward to your favorable consideration of Mr. Burnley.

Sincerely,

Thomas L. Moore
Executive Director

TLM/mls

MARY ANN WEYFORTH DAWSON, TO BE DEPUTY SECRETARY, DEPARTMENT OF TRANSPORTATION

TUESDAY, NOVEMBER 17, 1987

U.S. Senate,
Committee on Commerce, Science, and Transportation,
Washington, DC.

The committee met, pursuant to notice, at 12:26 p.m., in room SR-253, Russell Senate Office Building, Hon. Ernest F. Hollings (Chairman of the Committee) presiding.

Staff members assigned to this hearing: Sheryl Webber Washington, professional staff member; and Ruth Johnson, minority professional staff member.

OPENING STATEMENT BY THE CHAIRMAN

The Chairman. Today the Committee on Commerce, Science, and Transportation will hear testimony from Mimi Weyforth Dawson who has been nominated to serve as Deputy Secretary of the Department of Transportation.

I welcome Ms. Dawson, whom I have known in her capacity as a Federal Communications Commissioner and who served on the staff of my colleague Senator Packwood for many years.

Given your active service to the Federal government, I know you must share my concerns regarding the role that DOT has in shaping and implementing our national transportation policy.

In this regard, the Department is charged with overseeing our entire transportation system. This system—in the air, water and on the surface—has undergone significant regulatory changes during the past decade. DOT requires leadership that can steer it through these periods as well as provide solutions to problems which have resulted in the wake of these changes. At the top of the helm—there must be qualified and dedicated individuals, willing to make sometimes competing management decisions.

If confirmed, it will be Ms. Dawson's responsibility to assist the Secretary in the administration of the Department, as well as in the supervision and coordination of Departmental activities. This is a challenging position and I look forward to hearing testimony from Ms. Dawson regarding her qualifications for this appointment.

Ms. Dawson, we welcome you back to the committee, and we will hear now from Senator Packwood.

OPENING STATEMENT BY SENATOR PACKWOOD

Senator PACKWOOD. Mr. Chairman, thank you. I am delighted to have the opportunity to introduce Mimi to the committee. I should not say introduce. She has been here before in a number of ways as a member of the Federal Communication Commission. She has been in this committee room many, many times when she was my administrative assistant and press secretary.

There is no one, absolutely no one, that I can come with to a committee to introduce of whom I am more proud or in whom I have more confidence than Mimi.

Let me take you back a bit, though, to some of the experiences that I have had with Mimi. I first met her in the summer of 1970 when she was playing softball for Jimmy Symington's softball team and our team was playing them.

Mimi is very agile of mind but not fleet of foot necessarily. She beat a little grounder into the dirt and was running down the first baseline. She is on the opposite team at this stage, and she shouts at my first baseman "If you drop that ball, I will reward you handsomely". He dropped the ball, and Mimi was safe at first base.

I turned to my wife, who was with me at the game, and I said, "That is the kind of person I would like to have on my staff. This is the way the world goes around." Three years later when I was looking for a press secretary, a young legislative assistant named Alan Holmer was working for me. He is to be sworn in this afternoon as the Deputy U.S. Trade Representative.

He said, "There is a woman living in our building where my wife and I live, and she is working in the House, and maybe she would be interested." So we interviewed her. The upshot of it, Mr. Chairman, was that we interviewed 11 people here for a press secretary's job. Mimi was far and away the most qualified.

We flew her out to Portland, where we interviewed her against 10 others that we had interviewed in Portland. It was a nine-person interview committee. Then we asked the group of nine to list their top five choices of the 11 we had interviewed. On all of the nine lists, Mimi was number one. There was no second choice, third choice or fourth choice. She was number one in everybody's mind.

She took the job as press secretary. She had been in the office six weeks, and she was the de facto leader of the office. She became administrative assistant afterwards, but for all practical purposes she was the leader of the office within six weeks after arriving there.

She is an extraordinary manager, and I can say this because I know the condition the office was in when she took it on. It was a relatively small office then, but she saw it grow partially through seniority, partially through other obligations we took on, partially through the fact that I became ranking member of the Commerce Committee in 1979.

She hired the person that became my chief clerk for the minority when I was here, and she in essence was supervising Commerce and the personal office and helping in my campaign for re-election in 1980.

She is an extraordinary manager. There are so many talents that she has, I do not know which one I would put highest. She has an absolutely overwhelming personality, Mr. Chairman. In my life, I have not met a personality as good as Mimi's; man, woman, old, young or anybody else.

As a manager, she has yet to have her peer in any organization that I have been associated with. I cannot remember if this line from "The Natural" is in the movie. It is in the book. Roy Hobbs is asked what he wants to be, and he says," I want to be the best there is and the best there ever will be. She is that.

When she left, other people could succeed her, but no one could ever quite follow in her footsteps. The government is lucky to have her. Mr. Burnley is lucky to get her, and she will be without question one of the best managers, administrators, personalities that this government was ever lucky enough to get.

The CHAIRMAN. That is the strongest recommendation we have had on this committee. If I need any help with her, I am going to come to you. [Laughter.]

Now, Ms. Dawson, if you can please both Senator Packwood and John Dingel, you are some lady, I can tell you that right now.

We thank you very much, Senator Packwood.

I have a statement that Senator Danforth would like to have included in the record.

[The statement and biographical sketch follows:]

OPENING STATEMENT BY SENATOR DANFORTH

Mr. Chairman, it is a pleasure for me to join today with Senator Packwood in introducing Mimi Dawson as President Reagan's choice to be Deputy Secretary of Transportation.

I have known Mimi for many years. She is from my home state and my hometown. Her sister worked in my office as one of my original Senate staff.

Mimi's record is one of singular achievement. Since coming to Washington in November 1972, she has risen rapidly. She has served as a legislative assistant to two Missouri Congressmen, Bill Clay and Dick Ichord, as Administrative Assistant to Senator Packwood, and most recently as a Member of the Federal Communications Commission. In every position she has held, Mimi has demonstrated an initiative, a conscientiousness, and a commitment that have earned her the respect of those around her and have led to her being tapped for higher office.

Mr. Chairman, it is with great enthusiasm that I endorse the President's choice of Mimi Dawson to be Deputy Secretary of Transportation.

ERNEST F HOLLINGS SOUTH CAROLINA CHAIRMAN

DANIEL K INOUYE HAWAII
WENDELL H FORD KENTUCKY
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United States Senate
COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
WASHINGTON, DC 20510-6125

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

(If more space is needed, please use attached REMARKS sheet)

A. BIOGRAPHICAL DATA

1. Name: Dawson (Last) Mary Ann (First) Weyforth (Other) (Middle)

Address: 4207 Linnean Avenue, NW
Washington, D.C. 20008
(Current residence)

Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554
(Business)

2. Position to which nominated: Deputy Secretary of Transportation
Date of nomination: November 5, 1987

3. Date of birth: August (month) 31 (day) 1944 (year)
Place of birth: St. Louis, Missouri, USA

4. Marital status: Married
Full name of Spouse: Rhett Brewer Dawson

5. Names and ages of children: Elizabeth Stuart Dawson, 2-1/2

6. Education:

Institution	Dates attended	Degrees received	Dates of degrees
Washington University	1962-1966	A.B.	1966

7. Employment record: List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

From	To	Name of employer	Address	Type of work
7/81	Present	Federal Communications Commission	1919 M Street, NW, #826 Washington, DC 20554	Commissioner
9/73	7/81	Sen. Bob Packwood	145 Russell SOB	Administrative Ass't
6/73	9/73	Cong. Richard Ichord	US House of Repre.	LA and Press
2/73	6/73	Cong. Clay	US House of Repre.	Legislative Ass't
11/72	2/73	Unemployed	116-4th St, NE, D.C.	
9/72	11/72	Citizens for Dowd	No longer exists	Press
7/72	8/72	Citizens for Schram	No longer exists	Press

(see pg. 10 - "Remarks" for employment record continuation)

8. Government experience: List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other part-time service or positions.

12 years of Congressional experience as listed above

Commissioner, Federal Communications Commission, 1981-present

Member of Federal-State Joint Board, 1983-present

Member of U.S. delegation negotiating U.S.- China telecommunications protocol with the Peoples Republic of China, 1982

Member of U.S. delegation to Niagara Conference, 1984-85 (U.S.- Canada telecommunications bilateral)

Defense Commissioner, FCC, 1982-86.

9. **Political affiliations activities:** List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last 10 years.

~~Services rendered to the 1974 and 1980 reelection campaigns of~~
Senator Bob Packwood.

Contributed to Carol Schwartz for Mayor campaign in 1986

Sponsor of fundraiser for Cissy Baker for Congress 1982

Member of honorary committee for Norma Paulus for Governor 1986

Oversaw operations of the Republican Senate Campaign Committee for

Senator Packwood 1976-78

10. **Memberships:** List all memberships and offices held in professional, fraternal, scholarly, civic, charitable, and other organizations.

Cystic Fibrosis Foundation, Trustee
American Council of Young Political Leaders, Director
~~Atlantic Association of Young Political Leaders, Secretary General~~
Washington Center, Director
~~Center for Telecommunications Study, George Washington U., Advisory~~ Board
Corcoran School of Art, Member of Art School Committee
Washington Womens Network, Steering Committee member
Pi Beta Phi Sorority during college, several positions held
Women's Forum, member
Republican Federation of Women, member
Republican Womens Caucus, member

11. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievement.

American Women in Radio and Television- certificate of achievement

Washington Womens Magazine, Woman of the Year- 1985

American Teleport Association- Leadership Award

Alternative Carriers Association- President's award

~~Gubernatorial Proclamation - John Ashcroft, Governor of Missouri 19~~86

~~"Outstanding Missourian" Proclamation, State of Missouri House and~~ Senate 1986

~~Who's Who, Washington University 1966, Who's Who in American Politi~~cs

12. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials you have written.

"Changing Times for Telecommunications", The Japan Times July 20, 1983

"Regulating Cable Television: Exclusive Franchising and the First Amendment", Detroit College of Law Review, Vol.86, Issue 4, Winter

"S.999: Meeting the needs of National Defense", The International Association of C^3I, Signal Magazine, Sept. 83

"Enhancing National Security and Emergency Preparedness", The International Association of C^3I, Signal Magazine, May 1984

"Technology: The Main Engine of Social Change", The International Association of C^3I, Signal Magazine, June 1984

"Technological Developments", The International Association of C^3I, Signal Magazine, May 1986

"The Reverticalization of the Telecommunications Market", IEEE Communications Magazine, Vol. 25, No. 1, January 1987

Article on Broadcast Ownership Policy, Broadcast Daily, NATPE Edition, January 1985

The CHAIRMAN. Let me first hear from Ms. Dawson.

STATEMENT OF MARY ANN WEYFORTH DAWSON

Ms. DAWSON. Thank you, Mr. Chairman. It is an honor for me to come before you today as President Reagan's nominee to become Deputy Secretary of the Department of Transportation. I would like to thank Senator Packwood, for whom I have worked as chief of staff for many years, for his kind, generous introduction and remarks on my behalf.

It is a special privilege for me to seek confirmation before this committee because, for me, it means returning to the place which has played such a large role in my professional career in government. It was this committee that six years ago vested their confidence in me to carry out the duties of a Federal Communications Commissioner. It was this committee which I had the pleasure of working with while I served on Senator Packwood's staff.

During my recent courtesy visits, I have had a chance to renew old acquaintances and make new friends. As the Deputy Secretary of Transportation, I hope to draw upon these experiences to further the good working relationship between the Department and the Congress.

Secretary Designate Burnley and I both understand the importance of this relationship in meeting the challenges ahead.

I also look forward to helping him carry out the management and policy responsibilities of the Department. I believe that I can make a contribution to that endeavor by bringing the valuable insights I have gained from my 18 years of government service to the Department of Transportation.

My tenure at the FCC will be particularly relevant. The Department of Transportation and the FCC have faced and continue to deal with critical economic reform issues in the services industries.

My experience in telecommunications has taught me that the transition period which follows such reform of any industry can be turbulent. The issues of growth, quality of service and economic concentration in the marketplace have a direct impact on how well the consumers fare in a new environment.

In transportation, we must follow a balanced course which maximizes economic gains for consumers, preserves safety at the very highest levels, and deals effectively with the transition from a regulated environment to a freer market economy. In doing so, we can respond to the legitimate concerns while preserving the benefits of deregulation.

Our highways, roads, airways and waterways are a great national asset. Equally important are the men and women who work each day to make them better. I look forward to working with them to insure safe and efficient transportation industries.

Finally, I look forward to working with the Secretary Designate and the Congress as we pursue policies that best meet this country's transportation needs.

Thank you, Mr. Chairman. I look forward to answering your question.

The CHAIRMAN. Thank you, Ms. Dawson. I will submit some questions for the record, as will several other Senators. As a result of this roll call and the hour, we will have to repair to other meetings.

With all of your wizardry, just give us a sense of history over there in the Department of Transportation in reading and studying everything about it.

First, regarding the Coast Guard, we have had, as an example, Secretary John Volpe in particular and others come up and say no, if they had reorganized the government they never would have put the Coast Guard in the Department of Transportation. We have found in instances over the several years where the Coast Guard has just been used because they had some good Philippino mess cooks who could provide a good place to eat, and they had wonderful jet planes that I found in Delhi, India. They were jetting not around the coast but all around the world and using the Coast Guard jet craft for emergency political meetings at the White House and such things and were otherwise totally underfunded.

We have increased the size of the United States by one-third with the extension of the 200 mile economic zone here about eight years ago. We have come along now with a tremendous drug problem, and with the increased responsibility there we have decreased the Coast Guard.

We keep cutting it, and then Senator Stevens, myself and others have to run around. I have to sneak through the Budget Committee. I cannot get it out of this one because you all threaten to veto and everything else. We put in these reconciliation or continuing resolutions to try to get some money so they can continue to do their jobs.

With respect to a sense of history with the Motor Carrier Administration recommendation, now certainly you do not recommend an associate administrator for the maritime or for the railroads or for air. You have administrations for all of those. Yet, you have an associate administrator over there, I think it is, within the Federal Highway Administration handling motor carrier problems.

Here, the truckers and buses and everyone else comes along, and they say we cannot get any attention over there, just like the Coast Guard is frustrated. They cannot get the attention of your Department.

My question would be why do you continue to oppose it? Well, you have not because you are just coming on board, but I do not see how logically they can say it is working fine, and if it is working fine let us do away with the FAA and the Maritime Administration and the Federal Railroad Administration.

In similar fashion, a sense of history would answer the America West petition. I wish you would send me a copy of that.

Ms. DAWSON. I will, Senator.

The CHAIRMAN. I would like to send you an answer to it. A sense of history would show you that they have no right, title or interest. On the contrary, until we had deregulation it was illegal for them to land at Washington National, and Washington National slots had all been allocated on public convenience and necessity under a 500 mile restriction. It was only when Russell Long wanted to land down in New Orleans that they have extended it, and we were suffering from saturation then.

So, under deregulation we are going to give every community in America a slot to land? Obviously not. That would bring about total chaos. So when you look at their slot policy or white paper or whatever else you want to put out, you want to understand that when you started with deregulation, all those slots on the premise of having proved the public convenience and necessity of a particular community and, in essence, those slots belong to the communities and not the airlines.

Therefore, Senator Kassebaum and I and a bunch of other Senators are trying to forestall the Department of Transportation's willy nilly sale of them to the highest bidder. It is not supposed to be a moneymaking situation. Government is supposed to provide service and not money.

Here we are, in my example, I used to have three flights up, three flights back on National Airlines. Pan Am took over. They went almost broke, so they sold off to Air Florida.

Air Florida crashed, and to settle some of the cases and get money, they sold the slots as an economic thing, whereas the community in which I live had proven the convenience and necessity of three flights up and three flights back now has none at all. They have lost that service. There are many other communities similarly situated.

So watch that very carefully for us. Watch the idea of the independent agency, because we know now if Secretary Burnley goes over to the cabinet table, they are all going to cross-examine him about airline safety.

If you put them as an independent agency, there is no one in the cabinet that is going to be able to answer questions about airline safety whatsoever as an independent agency. I do not think too strongly of that idea. You have to be careful on that one.

The reorganization that Secretary Burnley is talking about, I do not think he is going to have time for all of that. He has got more problems, like the old woman that lives in the shoe. He is going to have to get to the problems at hand of safety and not just articulate it now with Washington rhetoric, highest priority.

I have seen these folks come and learn the rhetoric, but we are going to be watching very carefully. We have another hearing tomorrow, and we will keep the light of public interest on this particular issue because it is a very, very dangerous one.

We have been listening all year long how safe it is and how wonderful and grand it is. Anyone who has been on an airplane for years on end as I have and you have and many others knows differently. Secretary Dole had a near miss down in New Orleans shortly after she left her post of Secretary.

You do not want to ask her about those near misses now. Before, it was oh, do not worry about the near misses. It is the way they record them and everything else. You ask her now, and she wants safety.

What we really need to is to understand that we need more controllers. We need more maintenance checks. We need to put some chucks in the wheel. With these folks trying to compete under the marketplace pressures, they are bound to try to sacrifice safety if their competition or opposition sacrifices safety. They are going to be forced to it, and that has been the trend.

These so-called hub things like Denver, like Charlotte, like Atlanta, there is just no way to dump off 20 and 30 planes at one time and add on and get away with 20 or 30 flights all within a half hour; yet, that is the way they are scheduled. Yes, that is the way the Department has been coming up, but we are going to get them together voluntarily.

Who is going to yield? None of them have.

So we need some rules and regulations to bring order out of chaos by the Department. I think, as Senator Packwood has testified, you are just the individual to help us. We appreciate it very much. I have enjoyed meeting with you and discussing some of these things, but I wanted to cite those in the record.

If you would like to comment, fine.

Ms. DAWSON. I hesitate at this time, Mr. Chairman. It has been such a wonderful hearing so far.

I do think I would make just one small comment, because I know the luncheon policy is shortly before you.

I, as you know, am a believer in economic deregulation. I think there are many benefits to it. I think, frankly, that one of the problems has been that after a period of economic deregulation, whether it is a massive effort or whether it is a gradual phase-in, for government to stick its head in the sand and say there are no problems, to disavow their existence and to be unwilling to take action does a disservice to the program that it supports as well as to consumers.

I vow to you that when there is a problem, I will address it. I will not stick my head in the sand and say that deregulation is a panacea and that nothing goes wrong, and I will make sure that when there is a problem, I will look at it. If something needs to be done in terms of reregulation, I will do it.

The CHAIRMAN. We thank you very much for your appearance here.

The committee will be in recess until the call of the Chair.

[The questions follow:]

PREHEARING QUESTIONS OF THE COMMITTEE AND THE ANSWERS

Qualifications

Question 1: How do you think your background as a Federal Communications Commissioner and a former congressional staff member makes you qualified to serve as Deputy Secretary of Transportation?

Answer:

Before my tenure on the Federal Communications Commission, I served as Chief of Staff to Bob Packwood and worked closely with the Senate Commerce Committee staff in these capacities. I was and continue to be actively involved in the development of laws and policies affecting the service industries. During my time of involvement with the Committee, Congress enacted legislation to reduce or eliminate economic regulation of the aviation, motor carrier and railroad industries.

Additionally, as a Federal Communications Commissioner, I have worked to smooth the transition from a heavily regulated industry to one governed more by consumer demand and competition.

Beyond this specific experience, the opportunity I have had to understand the interests and operations of both the legislative and the executive branches of government will allow me to contribute to the Department of Transportation if I am confirmed as Deputy Secretary.

Specific Duties

Question 2: What will be your specific duties as Deputy Secretary of Transportation?

Answer:

The Secretary-Designate has said that he considers us to be a team. He expects me to share policy making responsibility with him, and to be primarily responsible for the day-to-day operations of the Department.

Priority Transportation Issues

Question 3: What do you consider to be the top priorities of the Department of Transportation during the next thirteen months of this Administration?

Answer:

The Department was created to ensure that the American people have the safest, most efficient transportation system possible. I look forward to working with Mr. Burnley to further that goal. Without question, the Department considers safety its highest priority. In addition, each mode of transportation has undergone important changes in the past several years. The Department must play an integral role in facilitating adjustment to these changes.

Secretary-Designate Burnley has stated that the aviation, motor carrier, and maritime industries are in a very turbulent time. He suggested that the FAA structure review, expedited implementation of Motor Carrier Safety Acts of 1984 and 1986, and efforts to ensure that the maritime industry has the necessary flexibility and support it needs to stay competitive are all priorities for the Department. I agree.

Lastly, the transportation industries have been the victim of closed international marketplaces. The Department has been actively involved in removing those international barriers.

Departmental Management

Question 4: Do you have any suggestions for improving the Department's efficiency as it relates to the timely completion of congressionally mandated reports and rulemaking proceedings?

Answer:

While I look forward to offering more specific suggestions after adequate time for a thorough review of the policy and support resources available, I believe that timely preparation of regulations and reports is extremely important. I will make it clear that unreasonable delay in the preparation of rulemaking documents and congressional reports will not be tolerated. Usually, strong direction by senior level people can play a major role in discouraging unnecessary delay or encouraging an appropriate reordering of priorities. I intend to monitor those agencies, offices, and/or officials responsible for the reports and rulemakings to ensure that they are completed in a timely fashion.

Regulatory Philosophy

Question 5: How would you describe your regulatory philosophy, particularly as it relates to the motor carrier industry?

Answer:

As a general rule, I believe that regulatory burdens which limit entry, impede competition, and limit opportunities for consumers and providers are not in the public interest.

On the other hand, safety is an area in which the government has a primary regulatory and oversight role. As you know, a number of industries have been through substantial regulatory reform; however, safety was never deregulated. While I support the many economic reforms that have taken place since 1977, I am fully supportive of the safety statutes and regulatory measures that have been enacted and promulgated in recent years.

Staggers Rail Act

Question 6: The Staggers Rail Act of 1980 was passed to allow the rail industry to respond to competition, to improve its financial status, and to provide improved rail service. Additionally, the Act was intended to retain regulatory protection where competition is not sufficient to ensure continued service at reasonable rates. Concerns have been raised by captive shippers that inadequate protection has been afforded those shippers who have no alternative but to use one railroad. What are your views on this issue? What role would you consider the Department having in this matter?

Answer:

I understand that the Department strongly supports the regulatory reforms embodied in the Staggers Rail Act of 1980, believing that they create a regulatory structure that balances the freedom to compete with residual regulatory powers sufficient to protect shippers without competitive alternatives from rate abuse.

There remains legitimate concerns regarding captive shippers. The Department must be vigilant in this area and recommend remedial action if necessary.

Hazardous Materials Transportation

Question 7: The transportation of hazardous materials continues to command a great deal of national attention. There is particular interest in the relationship between Federal regulation and safety and the adoption of more stringent State and local laws in this area. What do you consider can be done to allow States to participate more in these transportation decisions, particularly in the area of routing, while complying with standards set by the Department?

Answer:

I understand the Department has a long-standing policy of recognizing that the assessment and designation of routes for hazardous materials transportation is primarily a State responsibility. I support that position and agree that State and local governments are in the best position to know and evaluate particular local conditions which affect the risks associated with each route. I understand that the Department has proposed legislation that would clarify the Federal and State roles, explicitly recognizing the key responsibility of State and local governments in making routing decisions, subject to uniform Federal standards.

MARAD Title XI Program

Question 8: Notwithstanding the Administration's efforts to eliminate the Title XI program, MARAD expressly assured this Committee on March 31, 1987, that it will grant pending and future Title XI applications if they are in compliance with MARAD's published regulations and do not exceed the agency's statutory loan guarantee authority. Is this still the policy of the Department of Transportation?

Answer:

Yes. The policy as stated by the Maritime Administrator before your Committee reflects the Department's position.

Airline Deregulation

Question 9: With the recent round of airline mergers, the industry has become highly concentrated at both the national level and at specific airports, creating the possible elimination of competition. What will you do, if confirmed as Deputy Secretary, to ensure that quality service and fare competition are afforded air travelers? Do you believe airline deregulation has been beneficial to air travelers in all communities?

Answer:

The Department's role in reviewing mergers and acquisitions in the airline industry is a critical one. The statute requires that any such transaction that results in a substantial lessening of competition in any affected market should be turned down. I intend to be closely involved in any such application before the Department. I believe the policy in the statute is clear and I intend to ensure that the process follows it closely.

As you know, the Department has recently taken a number of actions to improve the quality of service to the traveling public. I intend to monitor the effectiveness of these actions and pursue further initiatives if necessary.

As a general rule, airline deregulation has been a positive development for the aviation industry and the traveling public. The explosive growth of the commuter airline industry, constantly improved commuter aircraft technology, local initiatives designed to attract airline service, and the increased practice of code sharing with major airlines suggest that service to small communities will continue to improve.

Airport Slots

Question 10: There has been a great deal of concern about how airport operating rights are allocated. Do you favor a continuation of the free market approach for making these decisions -- specifically, the Department's Buy-Sell rule -- or should there be increased government involvement?

Answer:

The major objective of the buy/sell rule is to reallocate slot holdings through market forces. I understand that there has been a great deal of activity under the rule. I will be alert to opportunities to improve the rule's enhancement of competition. The buy/sell rule only applies to the four airports where the high density rule limits the number of operations. I understand that the Department does not contemplate extending the high density rule (and the concomitant buy/sell rule) to additional airports.

Airport and Airway Trust Fund

Question 11: There has been a great deal of debate about the $5.6 billion surplus in the Airport and Airway Trust Fund. In your view, what is the top priority with respect to how this money should be used? Would you support a proposal to take the trust fund off-budget?

Answer:

I am fully supportive of utilizing the resources in the Aviation Trust Fund to ensure that the needs of civil aviation are met. The national aviation system depends on three major elements: modernizing the equipment needed to provide the air traffic control services that make the system so safe, airport facilities that provide the needed capacity on the ground, and the men and women who operate and maintain the system. I do not believe that one can reasonably establish priorities among these elements; the system depends on all three.

The Administration's position is that these needs can be met while keeping the Trust Fund on budget. This appears to be a sound position and I look forward to discussing this issue with Members of Congress and the industry.

FAA Structure

Question 12: There have been several proposals made to remove the FAA or the agency's air traffic control system from the Department of Transportation. What is your opinion of efforts to restructure DOT? If confirmed, how do you foresee your position vis-a-vis the Administrator of the FAA in terms of determining aviation safety policy matters?

Answer:

The question of whether alternatives to the present arrangement would ultimately improve aviation safety and airline service is an important one. I do not have a preferred position. I believe that the issue should receive high priority attention and be subjected to a careful and objective analysis. I commend the Subcommittee on Aviation for holding hearings on this issue.

I am aware that the Aviation Safety (Byrd) Commission will issue its final report covering some of the same questions in April 1988; however, I also think it is valuable for the Department to begin working with the Congress, the FAA, and the aviation community to examine these issues.

I have great regard for Alan McArtor. He is a very senior Administration official and I believe we can work together as a team to further aviation safety policy.

[Whereupon, at 12:43 p.m., the hearing adjourned subject to the call of the Chair.]

[The following information was subsequently received for the record:]

POSTHEARING QUESTIONS OF THE CHAIRMAN AND THE ANSWERS

Goals

Question 1: What do you hope to accomplish as Deputy Secretary of Transportation?

Answer:

I am committed to working with the Secretary in making sure that our transportation system is as safe and as efficient as possible. Virtually every mode of transportation is experiencing significant change, which places new demands on the system and on the Department's management and oversight of the system.

It is my objective to make sure that the Department of Transportation deals effectively and professionally with the challenges arising from these changes. The size of the Department and the breadth of its responsibilities place a premium on effective and responsive management. We are fortunate in having highly qualified modal administrators and line managers. In working with the Secretary to give direction to the Department's efforts, I expect to work closely with our managers to make sure that we fully understand problems, that we consider all points of view, and that our resources are deployed cost-effectively.

I am also committed to facilitating the transition from a regulated environment to a freer market economy in such critical modes of transportation as aviation, trucking and maritime. We can preserve the benefits of deregulation by continuing to make it a priority for the Department to understand and respond to legitimate concerns in these industries and from those who rely upon these industries.

I also seek to improve the ability of our transportation industries to compete internationally. As Deputy Secretary, I will be in a position to urge our trading partners to open their markets and to curtail unfair trade practices.

Motor Carrier Safety

Question 2: Congress took a significant step towards improving the safety record of the motor carrier industry by enacting the Commercial Motor Vehicle Safety Act of 1986. How do you view the progress that the Department is making toward improving safety in the motor carrier industry?

Answer:

The Department has made a great deal of progress over the past few years in its efforts to improve safety in the motor carrier industry. I understand that a tremendous amount of resources have been devoted to working with the states, the motor carrier industry and the public to ensure the Motor Carrier Safety Act of 1984 and the Commercial Vehicle Safety Act of 1986 are implemented in a manner consistent with the legislative intent of the Congress.

Under the Motor Carrier Safety Assistance Program, states are now conducting most roadside inspections and enforce vehicle and driver safety requirements. The motor carrier field staff has turned its focus on conducting safety reviews of truck and bus companies and initiating enforcement actions.

There were some delays in implementing the 1984 Act, but all rulemakings under the Act are scheduled for completion within the next few months. The Department and the states are working together closely to develop and implement the 1986 Commercial Driver's License Program. The Department has met -- and will continue to meet -- all the deadlines under that Act.

Deregulation and Safety

Question 3: Many believe that the cost-cutting practices associated with the intense level of competition fostered by deregulation have resulted in a decline in the margins of safety. If confirmed, how will you respond to the competing forces of deregulation while assuring the public a safe transportation system?

Answer:

First of all, I do not believe there has been a decline in safety. Accident rates have been declining in recent years for both airlines and trucks.

Second, although I am a strong believer in the ability of the market to provide the right combination of goods and services, I do not believe safety has been deregulated, nor should it be.

I believe that safety is best assured by strong enforcement of safety laws and regulations, and that we can do a far better job of improving safety by better targeting of inspections and enforcement. I understand that the Department is already improving the number and productivity of both the aviation and motor carrier inspection work force.

Amtrak

Question 4: Congress has debated at length and has continually reaffirmed its commitment to retaining a national rail passenger network. If confirmed as Deputy Secretary of Transportation, how would you view your role in ensuring that such a commitment is carried out? What are your views toward Amtrak as an integral part of the transportation network?

Answer:

I do believe that Amtrak is an integral part of our transportation system. The Department ought to work on a day-to-day basis with Amtrak to enhance Amtrak's efforts in meeting consumer needs and to enhance the cost effectiveness of its operations.

Alcohol-Related Auto Deaths

Question 5: There is evidence that shows that there has been an increase in the number of deaths related to operation of vehicles while under the influence of alcohol. What actions should the Federal Government take to address this increase?

Answer:

The Department's data on this question does not show an increase in the proportion of fatalities related to driving under the influence of alcohol. On the contrary, the trend from 1980 to the present has been a steady decline. Nonetheless, last year, the decline appears to have leveled off -- a disturbing fact that we believe requires serious attention from governments at all levels -- federal, state and local. I believe that the Federal Government's role is one of leadership -- leadership in keeping this issue in the public eye, in encouraging the states to strengthen drunk and drugged driving laws and enforcement programs, and in supporting research on new ways to get at this problem, disseminating information to the states on what works, and publicizing model programs. Additionally, the Department is working vigorously to implement the provisions relevant to this issue in the Commercial Motor Vehicle Safety Act of 1986.

Passive Restraints

Question 6: The current automobile passive restraint standard, issued in July 1984, requires either passive seat belts, air bags, or energy absorbing interiors, on a phased-in schedule. Do you believe the current passive restraint regulations are adequate?

Answer:

The rule appears to have worked very well, with safety belt use laws enacted in 29 states plus the District of Columbia, 25 percent of model year 1988 cars equipped with automatic restraints and all major automobile manufacturers committed to air bags. The current regulations appear to be very adequate. For the first time in the twenty year history of this issue, lives are being saved as a result of the rule promulgated in 1984.

Auto Bumper Standards

Question 7: In 1982 NHTSA rolled back the 5 mile per hour standard to 2.5 mile per hour. This action survived court challenge. NHTSA promised, at the time of rollback, to develop a bumper standard for consumers. This has not been done. What do you believe should be the Department of Transportation's activities regarding the bumper standard for passenger automobiles?

Answer:

The Department's statutory responsibilities are clearly spelled out in the Motor Vehicle Information and Cost Savings Act -- to promulgate bumper standards which seek to obtain the maximum feasible reduction of costs to the public and to the consumer. This implies a monitoring function to ensure that bumper standards are meeting this requirement, and it is my understanding that NHTSA is doing just that.

Aviation Safety

Question 8: As you know, air safety has been one of the major concerns in the last year. If confirmed as Deputy Secretary, what initiatives will you undertake to improve air safety?

Answer:

Jim Burnley and I are both committed to pursuing a wide range of actions in the aviation safety area. A number of them are regulatory, involving initiation of completion of whatever safety rules may be warranted. Examples would, of course, include: new and revised Terminal Control Areas, Mode C transponders, cockpit voice recorders/ flight data recorders, windshear avionics, and the Traffic Alert and Collision Avoidance System (TCAS). Determining whether and to what extent safety-related employees in the air transportation industry should be subject to drug testing will also be one of our rulemaking priorities.

We will continue to seek the numbers of controllers FAA needs to stay ahead of traffic growth and pursue better ways to recruit, hire, train, and retain these individuals. Similarly, increases in -- and ongoing improvements in the training off -- inspectors will receive substantial attention in the months ahead.

In addition, Administrator McArtor's well-publicized Impact '88 proposals covering eight different areas constitute an important package that we will be working with FAA to implement.

Finally, almost all elements of the National Airspace System (NAS) Plan have positive safety implications. These safety benefits will be achieved largely in conjunction with projects that also make the airspace more efficient. In addition, many NAS Plan projects will help produce more and better weather data and enable us to pass it along more quickly.

Airline Mergers

Question 9: With recent airline mergers and bankruptcies, the industry has become highly concentrated -- both nationally and at particular airports. If required to take specific steps to improve competition in the airline industry, what would you do?

Answer:

While market share measures both nationally and at particular airports have increased, the industry is vigorously competitive today. For example, the number of city-pair markets receiving competitive services has grown from 1266 in 1978 to 1800 today. This is a nearly 50 percent increase in head-to-head competition.

I understand the Department is carefully monitoring potential entry barriers and any other conditions which might impede competition in the industry. Some of these conditions include computer reservation systems, on which the Department has a detailed study underway; airport access limits; slot restrictions at the four high density airports (on which there is also a study underway); and airport capacity generally.

I will be vigilant in monitoring all these concerns and initiating or recommending action whenever appropriate.

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